No. 17-965

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

STATE OF HAWAII, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: JAN. 5, 2018
CERTIORARI GRANTED: JAN. 19, 2018

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 17-17168

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
10/24/17	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. 9th Circuit Rule 3-3 Preliminary Injunction Appeal. [10629183] (HH) [Entered: 10/24/2017 10:26 AM]
		* * * * *
10/25/17	5	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS Unopposed Motion for miscellaneous relief [motion in preliminary injunction appeal to establish expedited briefing schedule negotiated by the parties]. Date of

DATE	DOCKET NUMBER	PROCEEDINGS
		service: 10/25/2017. [10630849] [17-17168] (Murphy, Anne) [Entered: 10/25/2017 10:52 AM]
		* * * * *
10/25/17	8	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) The parties' emergency motion to expedite the briefing of the emergency stay motion and the briefing of this preliminary injunction appeal is granted (Docket Entry No. [5]). The opposition to the emergency motion for stay is due October 31, 2017. The reply in support of the motion is due November 2, 2017. The opening brief is due November 2, 2017; the answering brief is due November 18, 2017; and the optional reply brief is due November 29, 2017. The parties' request for expedited oral argument will be addressed by separate order. [10631237] (ME) [Entered: 10/25/2017 01:39 PM]
10/26/17	9	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) Appellants' request for an immediate administrative stay, con-

DATE	DOCKET NUMBER	PROCEEDINGS
		tained in the motion for an emergency stay, will be addressed together with the emergency motion. The briefing schedule for this appeal is amended to reflect that any amicus brief is due November 22, 2017. Oral argument will take place on December 6, 2017, at 2:00 p.m. PST in Seattle, Washington. Each side will be allocated 30 minutes of time. [10632338] (ME) [Entered: 10/26/2017 10:42 AM]
10/26/17	10	Notice of Oral Argument on Wednesday, December 6, 2017—2:00 P.M.—SE 7th Flr Courtroom 2—Seattle WA. View the Oral Argument Calendar for your case **here**. Be sure to review the GUIDELINES for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible). When you have reviewed the calendar, download the ACKNOWLEDGMENT OF HEARING NOTICE form, complete the

DATE	DOCKET NUMBER	PROCEEDINGS
		form, and file it via Appellate ECF or return the completed form to: SEATTLE Office. [10632612] (AW) [Entered: 10/26/2017 11:43 AM]
10/30/17	11	Filed (ECF) STATE OF WASHINGTON; STATE OF CALIFORNIA; STATE OF MARYLAND; STATE OF MASSUCHUSETTS; STATE OF NEW YORK; STATE OF OREGON Motion to intervene. Date of service: 10/30/2017. [10636592] [17-17168] (Purcell, Noah) [Entered: 10/30/2017 03:15 PM]
		* * * * *
10/31/17	13	Added Plaintiffs/Appellees John Does 1 & 2 and Muslim Association of Hawaii, Inc.. [10638337] (HH) [Entered: 10/31/2017 02:17 PM]
10/31/17	14	Filed (ECF) Appellees State of Hawaii, Ismail Elshikh, John Does and Muslim Association of Hawaii, Inc. response opposing motion ([4] Motion (ECF Filing), [4] Motion (ECF Filing) motion to stay lower court action). Date of service: 10/31/2017. [10638619] [17-17168] (Katyal,

DATE	DOCKET NUMBER	PROCEEDINGS
		Neal) [Entered: 10/31/2017 03:24 PM]
		* * * * *
11/2/17	26	Submitted (ECF) Opening Brief for review. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 11/02/2017. [10642025] [17-17168] (Swingle, Sharon) [Entered: 11/02/2017 04:10PM]
11/2/17	27	Submitted (ECF) excerpts of record. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 11/02/2017. [10642038] [17-17168] (Swingle, Sharon) [Entered: 11/02/2017 04:14 PM]
11/2/17	28	Filed clerk order: The opening brief [26] submitted by John F. Kelly; et al., is filed. Filer is ordered to file 10 copies of the brief in paper format for delivery to the Court by 12pm Pacific time on Friday, 11/03/2017, accompanied by certification, attached to the end of each copy of the brief, that

DATE	DOCKET NUMBER	PROCEEDINGS
		the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [27] submitted by John F. Kelly; et al. Filer is ordered to file 4 copies of the excerpts in paper format for delivery to the Court by 12pm Pacific time on Friday, 11/03/2017, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10642056] (SML) [Entered: 11/02/2017 04:20PM]
11/2/17	29	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS reply to response (motion to stay lower court action). Date of service: 11/02/2017. [10642161] [17-17168] (Swingle, Sharon) [Entered: 11/02/2017 05:25 PM]
		* * * * *
11/7/17	38	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J.

DATE	DOCKET NUMBER	PROCEEDINGS
		Trump, U.S. Department of State, USA and USDHS response opposing motion ([11] Motion (ECF Filing), [11] Motion (ECF Filing) motion to intervene). Date of service: 11/07/2017. [10647149] [17-17168] (Byron, H. Thomas) [Entered: 11/07/2017 07:03 PM]
11/13/17	39	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) The Government's motion for an emergency stay of the district court's preliminary injunction pending hearing and resolution of the expedited appeal is granted in part and denied in part. The preliminary injunction is stayed except as to "foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States," as set out below. Trump v. Int'l Refugee Assistance Project ("IRAP"), 137 S. Ct. 2080, 2088 (2017); see also Nken v. Holder, 556 U.S. 418, 434-35 (2009). The injunction remains in force as to foreign nationals who have a "close familial rela-

DATE	DOCKET NUMBER	PROCEEDINGS
		tionship" with a person in the United States. IRAP, 137 S. Ct. at 2088. Such persons include grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins. See Hawaii v. Trump, 871 F.3d 646, 658 (9th Cir. 2017). "As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading [Proclamation 9645]." IRAP, 137 S. Ct. at 2088. MOTION GRANTED IN PART; DENIED IN PART. [10650695] (WL) [Entered: 11/13/2017 09:24 AM]
11/14/17	40	Filed (ECF) Acknowledgment of hearing notice. Location: Seattle. Filed by Attorney Lowell Sturgill, Jr. for Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, USDHS, U.S. Department of State and USA. [10653542] [17-17168] (Sturgill, Lowell) [Entered: 11/14/2017 02:08 PM]
		* * * * *
11/18/17	51	Submitted (ECF) Answering Brief for review. Submitted by

DATE	DOCKET NUMBER	PROCEEDINGS
		Appellees State of Hawaii, Ismail Elshikh, John Does and Muslim Association of Hawaii, Inc.. Date of service: 11/18/2017. [10659834] [17-17168] (Katyal, Neal) [Entered: 11/18/2017 09:20PM]
		* * * * *
11/20/17	53	Filed clerk order: The answering brief [51] submitted by appellees is filed. Filer is ordered to file 10 copies of the brief in paper format for delivery to the Court by 12pm Pacific time on Tuesday, 11/21/2017, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10660126] (SML) [Entered: 11/20/2017 08:56 AM]
		* * * * *
11/20/17	61	Filed order (MICHAEL DALY HAWKINS, RONALD M.

DATE	DOCKET NUMBER	PROCEEDINGS
		GOULD and RICHARD A. PAEZ) States' Emergency Motion to Intervene Under Federal Rule 24 and Circuit Rule 27-3 (Dkt. [11]) is DENIED. The States of Washington, California, Maryland, Massachusetts, New York, and Oregon may proceed as amici under the timeline specified in the Court's October 26, 2017 Order. [10661731] (SVG) [Entered: 11/20/2017 04:51 PM]
		* * * * *
11/22/17	103	Filed (ECF) Acknowledgment of hearing notice. Location: Seattle. Filed by Attorney Neal Kumar Katyal for Appellees Ismail Elshikh, John Does, Muslim Association of Hawaii, Inc. and State of Hawaii. [10664528] [17-17168] (Katyal, Neal) [Entered: 11/22/2017 11:40AM]
		* * * * *
11/29/17	161	Submitted (ECF) Reply Brief for review. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 11/29/2017. [10671212] [17-17168]

DATE	DOCKET NUMBER	PROCEEDINGS
		(Swingle, Sharon) [Entered: 11/29/2017 11:30AM]
11/29/17	162	Filed clerk order: The reply brief [161] submitted by appellants is filed. Filer is ordered to file 10 copies of the brief in paper format for delivery to the Court by 12pm Pacific time on Thursday, 11/30/2017, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10671249] (SML) [Entered: 11/29/2017 11:44 AM]
		* * * * *
12/4/17	171	Received order from the Supreme Court dated 12/04/2017 regarding: The application for a stay presented to Justice Kennedy and by him referred to the Court is granted, and the District Court's October 20, 2017 order granting a preliminary injunction is stayed pending disposition of the Government's appeal in the

DATE	DOCKET NUMBER	PROCEEDINGS
		United States Court of Appeals for the Ninth Circuit and disposition of the Government's petition for a writ of certiorari, if such writ is sought. If a writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for a writ of certiorari, this order shall terminate when the Court enters its judgment. In light of its decision to consider the case on an expedited basis, we expect that the Court of Appeals will render its decision with appropriate dispatch. Justice Ginsburg and Justice Sotomayor would deny the application. (PANEL) [10677252] (OC) [Entered: 12/04/2017 03:10PM]
		* * * * *
12/6/17	175	ARGUED AND SUBMITTED TO MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ. [10681439] (SB) [Entered: 12/06/2017 04:28 PM]
12/6/17	176	Filed Audio recording of oral argument.

DATE	DOCKET NUMBER	PROCEEDINGS
		Note: Video recordings of public argument calendars are available on the Court's website, at http://www.ca9.uscourts.gov/media/
		[10683446] (SB) [Entered: 12/08/2017 07:52 AM]
12/22/17	177	FILED PER CURIAM OPINION (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) AFFIRMED IN PART; VACATED IN PART. FILED AND ENTERED JUDGMENT. [10702103] (MM) [Entered: 12/22/2017 03:55 PM]
12/22/17	178	FILED ORDER AND PER CURIAM OPINION (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) The opinion disposition filed on December 22, 2017, is withdrawn and a new opinion disposition is filed concurrently with this order. AFFIRMED IN PART; VACATED IN PART. FILED AND ENTERED JUDGMENT. [10702256]—[Edited: added webcite. 12/27/2017 by SLM] (MM) [Entered: 12/22/2017 05:05 PM]
12/22/17	179	Appellant John F. Kelly in 17-17168 substituted by Appel-

DATE	DOCKET NUMBER	PROCEEDINGS
		lant Kirstjen Nielsen in 17-17168 [10702257] (RY) [Entered: 12/22/2017 05:06 PM]
1/11/18	181	**Supreme Court Case Info** Case number: 17-965 Filed on: 01/05/2018 Cert Petition Action 1: Pending [10721072] (RR) [Entered: 01/11/2018 09:20AM]
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Docket No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/17	1	COMPLAINT *for Declaratory and Injunctive Relief* against Donald J. Trump (Filing fee $ 400 receipt number 0975-1825544.), filed by State of Hawaii. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 JS 44—Civil Cover Sheet, # 13 Tillerson Summons, # 14 State Department Summons, # 15 DHS Summons, # 16 Kelly Summons) (Chin, Douglas) (Entered: 02/03/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/17	2	MOTION for Temporary Restraining Order Douglas S.G. Chin appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum in Support of TRO, # 2 Certificate with Word Count, # 3 Proposed TRO) (Chin, Douglas) (Entered: 02/03/2017)
		* * * * *
2/3/17	4	Summons Issued as to Rex Tillerson, in his capacity as Secretary of State. (emt,) (Entered: 02/03/2017)
2/3/17	5	Summons Issued as to U.S. Department of State. (emt,) (Entered: 02/03/2017)
2/3/17	6	Summons Issued as to U.S. Department of Homeland Security. (emt,) (Entered: 02/03/2017)
2/3/17	7	Summons Issued as to John F. Kelly, in his capacity as Secretary of the U.S. Department of Homeland Security. (emt,) (Entered: 02/03/2017)
2/3/17	8	Order Setting Rule 16 Scheduling Conference for 09:30AM on 4/3/2017 before Magistrate Judge KENNETH J. MANSFIELD— Signed by CHIEF JUDGE J.

DATE	DOCKET NUMBER	PROCEEDINGS
		MICHAEL SEABRIGHT on 2/3/2017. (Attachments: # 1 Memo from Clerk Re: Corporate Disclosure Statements) (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry.
		ATTACH THE SCHEDULING ORDER TO THE INITIATING DOCUMENT (COMPLAINT/NOTICE OF REMOVAL). **THE SCHEDULING ORDER AND MEMO RE: CORPORATE DISCLOSURES MUST BE SERVED WITH THE DOCUMENT.** (Entered: 02/03/2017)
		* * * * *
2/3/17	10	Declaration re 2 MOTION for Temporary Restraining Order. (Attachments: # 1 Exhibit A—

DATE	DOCKET NUMBER	PROCEEDINGS
		Doe 1, # 2 Exhibit B—Doe 2, # 3 Exhibit C—Doe 3, # 4 Exhibit D—Dickson Declaration, # 5 Exhibit E—Slaveria Declaration, # 6 Exhibit F—Szigeti Declaration, # 7 Exhibit G—Higashi Declaration, # 8 Exhibit H—Elshikh Declaration) (Chin, Douglas) (Entered: 02/03/2017)
2/3/17	11	Summons (Proposed) (Chin, Douglas) (Entered: 02/03/2017)
2/3/17	12	Summons Issued as to Donald J. Trump, in his official capacity as President of the United States. (emt,) (Entered: 02/03/2017)
2/3/17	13	Summons (Proposed) (Chin, Douglas) (Entered: 02/03/2017)
2/3/17	14	Summons Issued as to United States of America. (emt,) (Entered: 02/03/2017)
2/3/17	15	EX PARTE Motion *for In Camera Review of Exhibits A, B, and C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order*; Clyde J. Wadsworth appearing for Plaintiff State of Hawaii (Attachments: # 1 Declaration of Clyde J. Wadsworth, # 2 Proposed Order) (Wadsworth,

DATE	DOCKET NUMBER	PROCEEDINGS
		Clyde) (Entered: 02/03/2017)
		* * * * *
2/3/17	18	EO: The Court is in receipt of Plaintiff State of Hawaii's Motion for Temporary Restraining Order ("TRO"). Dkt. No. 2. The Government shall file a response to the Motion for TRO by Tuesday, February 7, 2017 at 12:00 noon (HST). The Court will hold a hearing on the Motion for TRO on Wednesday, February 8, 2017 at 9:30 a.m. (HST). (JUDGE DERRICK K. WATSON) (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/03/2017)
2/3/17	19	NOTICE of Hearing on Motion 2 MOTION for Temporary Restraining Order. Motion Hearing date has been set for 2/8/2017 at 9:30AM in Aha Kupono before

DATE	DOCKET NUMBER	PROCEEDINGS
		JUDGE DERRICK K. WATSON. (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry. (Entered: 02/03/2017)
		* * * * *
2/6/17	23	Emergency MOTION to Stay re 18 Link,,, Michelle R. Bennett appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Memorandum, # 2 Proposed Order) (Bennett, Michelle) (Entered: 02/06/2017)
2/6/17	24	EO: The Court is in receipt of Defendants' Emergency Motion to Stay All Deadlines Pending Resolution of Appellate Proceedings Regarding Nationwide In-

DATE	DOCKET NUMBER	PROCEEDINGS
		junction ("Motion to Stay"). Dkt. No. 23. Plaintiff State of Hawaii may file a response to the Motion to Stay by no later than Tuesday, February 7, 2017 at 9:00 a.m. (HST). (JUDGE DERRICK K. WATSON) (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/06/2017)
2/6/17	25	MEMORANDUM in Opposition re 23 Emergency MOTION to Stay re 18 Link,,, filed by State of Hawaii. (Chin, Douglas) (Entered: 02/06/2017)
2/6/17	26	Errata re 25 Memorandum in Opposition to Motion *for Emergency Stay*. (Marie-Iha, Deirdre) (Entered: 02/06/2017)
2/7/17	27	EO: Defendants' Emergency Motion to Stay All Deadlines Pending Resolution of Appellate

DATE	DOCKET NUMBER	PROCEEDINGS
		Proceedings Regarding Nationwide Injunction is hereby GRANTED IN PART. Dkt. No. 23. All pending deadlines and the hearing set for February 8, 2017 are VACATED. The matter is stayed as long as the February 3, 2017 injunction entered in Washington v. Trump, 2:17-cv-141 (W.D. Wash.), remains in place, or until further order of this Court. All further relief requested by the Emergency Motion is DENIED. A written order setting forth the Court's reasoning will follow. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry Modified to create link to motion on 2/7/2017 (ecs,).

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 02/07/2017)
		* * * * *
2/8/17	29	ORDER GRANTING 15 EX PARTE MOTION FOR IN CAMERA REVIEW OF EXHIBITS A, B, AND C TO DECLARATION OF DOUGLAS S. CHIN IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER. Signed by JUDGE DERRICK K. WATSON on 2/8/2017. (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/08/2017)
2/8/17	30	MOTION to Partially Lift Stay Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit Proposed First Am. Compl., # 2 Exhibit Decl. of Clyde J. Wadsworth, # 3 Exhibit

DATE	DOCKET NUMBER	PROCEEDINGS
		Proposed Order, # 4 Certificate of Service) (Katyal, Neal) (Entered: 02/08/2017)
2/9/17	31	EO: The Court is in receipt of Plaintiff State of Hawaii's Motion to Partially Lift Stay. Dkt. No. 30. The Government may file a response to the State's motion by Monday, February 13, 2017. Thereafter, the Court intends to rule on the motion without a hearing pursuant to Local Rule 7.2(d). IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/09/2017)
2/9/17	32	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' EMERGENCY MOTION TO STAY DEADLINES PENDING RESOLU-

DATE	DOCKET NUMBER	PROCEEDINGS
		TION OF APPELLATE PROCEEDINGS REGARDING NATIONWIDE INJUNCTION. Signed by JUDGE DERRICK K. WATSON on 2/9/2017. —The Emergency Motion to Stay is GRANTED IN PART. This matter is stayed as long as the February 3, 2017 injunction entered in Washington v. Trump remains in full force and effect, or until further order of this Court. All further relief requested by the Emergency Motion to Stay is DENIED. Re: 23 Emergency MOTION to Stay Deadlines, 27 EO on Motion to Stay (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/09/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
2/13/17	35	STATEMENT of No Position re 30 MOTION to Partially Lift Stay filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Rosenberg, Brad) (Entered: 02/13/2017)
2/13/17	36	EO: Upon consideration of the State of Hawaii's Motion to Partially Lift Stay ("Motion") (Dkt. No. 30), the Government's Statement of No Position (Dkt. No. 35), and good cause appearing therefor, the State's Motion is hereby GRANTED. The State may file (1) its Proposed First Amended Complaint, and (2) the Declaration of Clyde J. Wadsworth Regarding Exhibit C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order, both in the form previously submitted to the Court as exhibits to the Motion (see Dkt. Nos. 30-1 and 30-2). The State may do so no later than Wednesday, February 15, 2017. The Court's Feb-

DATE	DOCKET NUMBER	PROCEEDINGS
		ruary 9, 2017 stay order (Dkt. No. 32) otherwise remains in place. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/13/2017)
2/13/17	37	FIRST AMENDED COMPLAINT *for Declaratory and Injunctive Relief* against All Defendants, filed by State of Hawaii. (Attachments: # 1 Certificate of Service) (Katyal, Neal) Modified docket text on 2/14/2017 (ecs,). (Entered: 02/13/2017)
2/14/17	38	Declaration *of Clyde J. Wadsworth Regarding Exhibit C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order.* (Attachments: # 1 Certificate of Service) (Wadsworth,

DATE	DOCKET NUMBER	PROCEEDINGS
		Clyde) (Entered: 02/14/2017)
		* * * * *
2/15/17	40	EO: The Court hereby lifts the stay in this matter for the limited purpose of allowing the parties to file Motions to Appear Pro Hac Vice, Notices of Appearance of Counsel, and/or Applications to Practice, consistent with Local Rules 83.1(d) and (e). The Court's February 9, 2017 stay order (Dkt. No. 32) otherwise remains in place. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/15/2017)
		* * * * *
3/6/17	56	NOTICE by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Secu-

DATE	DOCKET NUMBER	PROCEEDINGS
		rity, U.S. Department of State, United States of America *of Filing of Executive Order* John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Exhibit A: New Executive Order) (Rosenberg, Brad) (Entered: 03/06/2017)
3/7/17	57	Joint MOTION for Entry of Proposed Briefing Schedule Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Proposed Order) (Katyal, Neal) (Entered: 03/07/2017)
3/7/17	58	MOTION to Lift Stay and for Leave to File a Second Amended Complaint Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Exhibit Proposed Second Amended Complaint, # 2 Exhibit Proposed Order, # 3 Certificate of Service) (Katyal, Neal) (Entered: 03/07/2017)
3/8/17	59	ORDER GRANTING PLAINTIFFS' 58 MOTION TO LIFT STAY AND FOR LEAVE TO

DATE	DOCKET NUMBER	PROCEEDINGS
		FILE A SECOND AMENDED COMPLAINT. Signed by JUDGE DERRICK K. WATSON on 3/8/2017. —The Court lifts the litigation stay imposed by the Orders dated February 7, 2017 (Dkt. No. 27) and February 9, 2017 (Dkt. No. []32). Plaintiffs STATE OF HAWAI'I and ISMAIL ELSHIKH may file a Second Amended Complaint in the form submitted to the Court as an exhibit to the Motion (Dkt. No. 58-1). (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Attachment replaced on 3/8/2017, NEF regenerated: # 1 Main Document—PDF flattened) (ecs,). (Entered: 03/08/2017)
3/8/17	60	BRIEFING SCHEDULE ORDER. Signed by JUDGE DERRICK K.

DATE	DOCKET NUMBER	PROCEEDINGS
		WATSON on 3/8/2017. Related doc: 57 (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Attachment replaced on 3/8/2017, NEF regenerated: # 1 Main Document—PDF flattened) (ecs,). (Entered: 03/08/2017)
3/8/17	61	NOTICE of Hearing on 65 Plaintiff's Motion For Temporary Restraining Order set for 3/15/2017 @ 09:30AM before JUDGE DERRICK K. WATSON. Counsel may participate by phone by notifying Judge Watson's Courtroom Manager (808-541-3073) by 3/14/2017 and providing the phone number where counsel may be reached at the time of the hearing. The Court will contact the parties via phone at the time of the hearing. (tyk)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry. Modified on 3/9/2017 (tyk,). (Entered: 03/08/2017)
		* * * * *
3/8/17	64	AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ***(SECOND)*** against John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America, filed by State of Hawaii, Ismail Elshikh. (Attachments: # 1 Exhibit 1—Copy of Executive Order dated 3/6/2017, # 2 Exhibit 2—Copy of Executive Order dated 1/27/2017, # 3 Exhibit 3—Collection of relevant Data for Hawaii, # 4 Exhibit 4—Tables for fiscal years 2005-2015, # 5 Exhibit 5—Copy of table of contents and executive summary, # 6 Exhibit

DATE	DOCKET NUMBER	PROCEEDINGS
		6—Copy of press release, # 7 Exhibit 7—Copy of transcript, # 8 Exhibit 8—Copy of Washington Post Article, # 9 Exhibit 9—Copy of this NBC News article, # 10 Exhibit 10—Copy of the draft DHS report, # 11 Exhibit 11—Final version of DHS report, # 12 Exhibit 12—Copy of NBC News article, # 13 Exhibit 13—Copy of Dissent Channel memorandum, # 14 Exhibit 14—Copy of DHS Q&A, # 15 Certificate of Service) (Katyal, Neal) Docket title text added on 3/9/2017 (ecs,). (Entered: 03/08/2017)
3/8/17	65	MOTION for Temporary Restraining Order Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order, # 2 Certificate of Word Count, # 3 Proposed Temporary Restraining Order, # 4 Certificate of Service) (Katyal, Neal) (Entered: 03/08/2017)
3/8/17	66	Declaration re 65 MOTION for Temporary Restraining Order. (Attachments: # 1 Exhibit A—

DATE	DOCKET NUMBER	PROCEEDINGS
		Dec. of Ismail Elshikh, PhD, # 2 Exhibit B-1—Supp. Dec. of George Szigeti, # 3 Exhibit B-2—Orig. Dec. of George Szigeti, # 4 Exhibit C-1—Supp. Dec. of Luis P. Salaveria, # 5 Exhibit C-2—Orig. Dec. of Luis P. Salaveria, # 6 Exhibit D-1—Supp. Dec. of Risa E. Dickson, # 7 Exhibit D-2—Orig. Dec. of Risa E. Dickson, # 8 Exhibit E—Dec. of Hakim Ounsafi, # 9 Certificate of Service) (Katyal, Neal) (Entered: 03/08/2017)
		* * * * *
3/10/17	94	ORDER OF RECUSAL. Magistrate Judge KENNETH J. MANSFIELD recused. Case reassigned to MAGISTRATE JUDGE KEVIN S.C. CHANG. Please reflect Civil Case No: CV 17-00050 DKW-KSC on all further filings. Signed by Magistrate Judge KENNETH J. MANSFIELD on 3/10/2017. (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at

DATE	DOCKET NUMBER	PROCEEDINGS
		the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/10/2017)
		* * * * *
3/13/17	145	MEMORANDUM in Opposition re 65 MOTION for Temporary Restraining Order filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Exhibit A: March 6, 2017 Letter from DOJ and DHS to White House, # 2 Exhibit B: Department of State Q&As, # 3 Certificate of Service) (Rosenberg, Brad) (Entered: 03/13/2017)
		* * * * *
3/13/17	183	MOTION to Intervene by Defendant Vincent Lucas (Attachments: # 1 [PROPOSED] Intervenor Vincent Lucas's Cross Complaint against the State of Hawaii and Ismail Elshikh, Exh A-B, # 2 Mailing Documentation)

DATE	DOCKET NUMBER	PROCEEDINGS
		(ecs,) [Note: Document received does not have an Original signature and no other copies provided to the court.] Modified on 3/16/2017 (ecs,). (Entered: 03/14/2017)
		* * * * *
3/13/17	189	MOTION to Intervene and to Dismiss and Enjoin Defendants by Intervenor Frederick Banks (Attachments: # 1 Mailing Documentation, # 2 Cover letter) [Note: No CV case number referenced on the Motion, however information as to the case is mentioned in the cover letter] (ecs,) (Entered: 03/14/2017)
		* * * * *
3/14/17	190	EO: The Court is in receipt of the Motions to Intervene filed by Frederick Banks and Vincent Lucas. Dkt. Nos. 183 and 189. The Motions are DENIED. Neither Motion identifies a statutory right to intervene within the meaning of either Fed. R. Civ. P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede either Movant's ability to protect his rights or

DATE	DOCKET NUMBER	PROCEEDINGS
		interests. Finally, neither Movant has a claim or defense that shares with the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of intervention. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/14/2017)
3/14/17	191	REPLY to Response to Motion re 65 MOTION for Temporary Restraining Order filed by State of Hawaii. (Attachments: # 1 Certificate of Word Count, # 2 Certificate of Service) (Katyal, Neal) (Entered: 03/14/2017)
		* * * * *
3/15/17	219	ORDER GRANTING MOTION FOR TEMPORARY RESTRAIN-

DATE	DOCKET NUMBER	PROCEEDINGS
		ING ORDER 65. Signed by JUDGE DERRICK K. WATSON on 3/15/2017. (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Main Document 219 replaced on 3/22/2017) (mta,). (Entered: 03/15/2017)
3/15/17	220	EP: Hearing held on 65 Plaintiffs' Motion For Temporary Restraining Order. Oral arguments heard. Motion taken under Advisement. Court to issue a written order. (Court Reporter Gloria Bediamol) (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the

DATE	DOCKET NUMBER	PROCEEDINGS
		Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/15/2017)
		* * * * *
3/17/17	227	MOTION *for Clarification* re 219 Order on Motion for TRO, Brad P. Rosenberg appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Memorandum of Law in Support of Motion for Clarification, # 2 Certificate of Service) (Rosenberg, Brad) Modified on 3/20/2017 (emt,). (Entered: 03/17/2017)
3/18/17	228	OPPOSITION to 227 MOTION *for Clarification* of TRO re 219 Order on Motion for TRO, filed by State of Hawaii. (Attachments: # 1 Certificate of Service) (Katyal, Neal) Modified on 3/20/2017 (emt,). (Entered: 03/18/2017)
3/19/17	229	EO: The Court is in receipt of the Federal Defendants' Motion for

DATE	DOCKET NUMBER	PROCEEDINGS
		Clarification of TRO. Dkt. No. 227. That Motion essentially asks whether the Court's March 15, 2017 Temporary Restraining Order was intended to apply to Sections 2 and 6 of the Executive Order. The Motion, in other words, asks the Court to make a distinction that the Federal Defendants' previous briefs and arguments never did. As important, there is nothing unclear about the scope of the Court's order. See Dkt. No. 219 (TRO) at 42 ("Defendants . . . are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation."). The Federal Defendants' Motion is DENIED. (JUDGE DERRICK K. WATSON) (watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered:

DATE	DOCKET NUMBER	PROCEEDINGS
		03/19/2017)
3/19/17	230	EO: In light of the Court's TRO directing the parties to submit a certain "stipulated briefing and hearing schedule," the parties' briefs relating to the Federal Defendants' Motion for Clarification of TRO, and the Court's EO regarding the same (Dkt. No. 229), the parties are further directed to advise the Court whether a stipulated path has been reached regarding proceedings before this Court concerning a possible extension of the Court's TRO. If a status conference is necessary, the parties are requested to contact Tammy Kimura, Courtroom Manager, forthwith. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 03/19/ 2017)
3/19/17	231	Errata re 228 Response *to Mot. to Clarify.* (Attachments: # 1 Certificate of Service COS for Errata) (Marie-Iha, Deirdre) (Entered: 03/19/2017)
		* * * * *
3/20/17	235	Joint MOTION for Briefing Schedule Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit Proposed Order, # 2 Certificate of Service) (Katyal, Neal) (Entered: 03/20/2017)
3/20/17	236	EO: The Court is in receipt of the parties' Joint Motion For Entry Of Proposed Briefing Schedule Order For Plaintiffs' Forthcoming Motion to Convert Temporary Restraining Order to a Preliminary Injunction. Dkt. No. 235. The Court enters the following briefing schedule: Plaintiffs shall file their Motion to Convert Temporary Restraining Order to a Preliminary Injunction ("Motion") by 9:30 A.M. H.S.T. on Tuesday, March 21, 2017. The Government shall file its Opposition by 9:30 A.M. H.S.T. on Friday, March 24, 2017. Plain-

DATE	DOCKET NUMBER	PROCEEDINGS
		tiffs shall file their Reply by 9:30 A.M. H.S.T. on Saturday, March 25, 2017. The Court will hold a hearing on Plaintiffs' forthcoming Motion at 9:30 A.M. H.S.T. on Wednesday, March 29, 2017. Counsel may participate by phone by notifying Judge Watson's Courtroom Manager by Tuesday, March 28, 2017 and providing the phone number where counsel may be reached at the time of the hearing. The Court will contact the parties via phone at the time of the hearing. The Court advises that the hearing date/time may be changed, or vacated, upon review of the briefs. Per the parties' stipulation, the Court's Temporary Restraining Order ("TRO") of March 15, 2017 (Dkt. No. 219) shall remain in place until such time as the Court rules on whether the TRO should be converted to a preliminary injunction or until otherwise ordered by the Court. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/20/2017)
3/20/17	237	MOTION to Intervene ("Tertius Interveniens Notice of Lack of Standing of State of Hawaii to Challenge President's Executive Order (Travel Ban)); (FRCVP Rule 20(a)(2)(B) & 28 USC 1397)"—by Intervenor Eric Richard Eleson. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Certificate of Service, # 8 Mailing Documentation) (emt,) (Entered: 03/21/2017)
3/21/17	238	MOTION to Convert Temporary Restraining Order to Preliminary Injunction Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum,

DATE	DOCKET NUMBER	PROCEEDINGS
		# 2 Exhibit Proposed Order, # 3 Certificate of Service) (Katyal, Neal) (Entered: 03/21/2017)
3/21/17	239	Declaration re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction *of Neal K. Katyal.* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Certificate of Service) (Katyal, Neal) (Entered: 03/21/2017)
3/21/17	240	EO: The Court is in receipt of a Motion to Intervene entitled, "Tertius Interveniens Notice of Lack of Standing of State of Hawaii to Challenge President's Executive Order (Travel Ban)" filed by Eric Richard Eleson. Dkt. No 237. The Motion is DENIED. The Motion identifies no statutory right to intervene within the meaning of either Fed. R. Civ. P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede Eleson's ability to protect his rights or interests. Eleson has no claim or defense that shares with the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of interven-

DATE	DOCKET NUMBER	PROCEEDINGS
		tion. Finally, to the extent Eleson seeks permissive joinder pursuant to Fed. R. Civ. P. 20(a)(2)(B), the Motion is likewise without merit. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/21/2017)
3/21/17	241	Mikki the Mime's MOTION to Intervene Pursuant to Fed. R. Civ. P. 24(a) and (b)—by Intervenor Joseph Camp. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Transmittal Letter, # 5 Mailing Documentation) (emt,) (Entered: 03/22/2017)
		* * * * *
3/22/17	243	EO: The Court is in receipt of a Motion to Intervene filed by

DATE	DOCKET NUMBER	PROCEEDINGS
		Mikki the Mime. Dkt. No 241. The Motion is DENIED. The Motion identifies no statutory right to intervene within the meaning of either Fed. R. Civ. P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede Movant's ability to protect her rights or interests. Finally, Movant has no claim or defense that shares with the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of intervention. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/22/2017)

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DATE	DOCKET NUMBER	PROCEEDINGS
3/24/17	251	MEMORANDUM in Opposition re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Sarsour v. Trump Slip Opinion, # 2 Washington v. Trump Order Containing Dissents) (Rosenberg, Brad) (Entered: 03/24/2017)
3/25/17	252	REPLY to Response to Motion re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction filed by Ismail Elshikh, State of Hawaii. (Attachments: # 1 Certificate of Word Count, # 2 Certificate of Service) (Katyal, Neal) (Entered: 03/25/2017)
3/25/17	253	Declaration re 252 Reply to Response to Motion, *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit D (DHS Fact Sheet), # 2 Exhibit E (DHS Q&A), # 3 Exhibit F (N.Y. Times Article), # 4 Certificate of Service) (Katyal, Neal) (Entered:

DATE	DOCKET NUMBER	PROCEEDINGS
		03/25/2017)
		* * * * *
3/28/17	258	NOTICE *of Filing of Declaration of Lawrence E. Bartlett* by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction, 251 Memorandum in Opposition to Motion. (Attachments: # 1 Declaration of Lawrence E. Bartlett, # 2 Certificate of Service) (Rosenberg, Brad) Modified on 3/29/2017 (emt,). (Entered: 03/28/2017)
		* * * * *
3/29/17	270	ORDER GRANTING MOTION TO CONVERT TEMPORARY RESTRAINING ORDER TO A PRELIMINARY INJUNCTION re 238—Signed by JUDGE DERRICK K. WATSON on 3/29/2017. "It is hereby ADJUDGED, ORDERED, and DECREED that: Defendants and all their respective officers, agents, servants, employees, and attorneys, and

DATE	DOCKET NUMBER	PROCEEDINGS
		persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court. No security bond is required under Federal Rule of Civil Procedure 65(c). The Court declines to stay this ruling or hold it in abeyance should an appeal of this order be filed." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/29/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/30/17	271	**NOTICE OF APPEAL** as to 219 Order on Motion for TRO,, 270 Order on Motion for Miscellaneous Relief,,,,, by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Rosenberg, Brad) Modified on 3/30/2017 9CCA NO. 17-15589 (emt,). (Entered: 03/30/2017)
3/30/17	272	USCA Case Number 17-15589 for 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Parties served by Ninth Circuit Court of Appeals. (Entered: 03/30/2017)
		* * * * *
3/31/17	275	TRANSCRIPT of Proceedings Pltf. Mt. for TRO held on March 15, 2017,—before Judge Derrick K. Watson. Court Reporter/ Transcriber Gloria T. Bediamol,

DATE	DOCKET NUMBER	PROCEEDINGS
		Telephone number (808) 541-2060. **90-Day Transcript Restriction:** PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/18/2017. Redacted Transcript Deadline set for 4/28/2017. Release of Transcript Restriction set for 6/26/2017. pp. 55. (gb@hid.uscourts.gov) (Entered: 03/31/2017)
3/31/17	276	TRANSCRIPT of Proceedings Mt. to convert TRO to PI held on March 29, 2017,—before Judge Derrick K. Watson. Court Reporter/Transcriber Gloria T. Bediamol, Telephone number

DATE	DOCKET NUMBER	PROCEEDINGS
		(808) 541-2060. **90-Day Transcript Restriction:** PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/18/2017. Redacted Transcript Deadline set for 4/28/2017. Release of Transcript Restriction set for 6/26/2017. pp. 45. (gb@hid.uscourts.gov) (Entered: 03/31/2017)
4/3/17	277	Joint MOTION to Stay *District Court Proceedings Pending Resolution of Defendants' Appeal* Brad P. Rosenberg appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Depart-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Proposed Order, # 2 Certificate of Service) (Rosenberg, Brad) (Entered: 04/03/2017)
4/3/17	278	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "Appellants' unopposed motion to expedite the briefing and consideration of a motion to stay and to expedite the briefing and consideration of the merits of this preliminary injunction appeal (Docket Entry No. 12) is granted. The briefing schedule shall proceed as follows: the opening brief and the motion for a stay pending appeal are due April 7, 2017; the answering brief and the response to the motion for a stay pending appeal are due April 21, 2017; and the optional reply brief and the reply in support of the motion for a stay pending appeal are due April 28,

DATE	DOCKET NUMBER	PROCEEDINGS
		2017. Any amicus briefs are due April 21, 2017. The parties' request for expedited argument is granted. This case shall be heard on the calendar for May 2017, taking into account the limited dates the parties have advised they are available for argument." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 04/03/2017)
4/3/17	279	ORDER re 277—Signed by JUDGE DERRICK K. WATSON on 4/3/2017. "All deadlines in this case, including the Defendants' deadline to file a response to the Second Amended Complaint, the parties' deadline to file a Scheduling Conference Statement pursuant to Rule 16.2(b), and the deadline to hold a conference pursuant to Rule 26.1(a), are hereby **STAYED**. The Court also hereby CONTINUES the Rule 16 Scheduling Conference that had been set for April 18, 2017.

DATE	DOCKET NUMBER	PROCEEDINGS
		It is further ORDERED that the parties shall submit, within fourteen days of the final disposition of appellate proceedings, a joint status report proposing the schedule for any further proceedings in this matter." Motion terminated: 277 Joint MOTION to Stay *District Court Proceedings Pending Resolution of Defendants' Appeal* filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 04/03/2017)
4/3/17	280	EO: Rule 16 Scheduling Conference set for 4/18/2017 before Magistrate Judge Kevin Chang is here-

DATE	DOCKET NUMBER	PROCEEDINGS
		by vacated. Refer to [ECF No. 279] Order issued by Judge Derrick K. Watson. (MAGISTRATE JUDGE KEVIN S.C. CHANG) (lls,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 04/03/2017)
		* * * * *
4/21/17	285	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: " . . . initial en banc proceedings are concluded, and all remaining issues will be decided by the three-judge panel." "This case is scheduled for oral argument before the three-judge

DATE	DOCKET NUMBER	PROCEEDINGS
		panel at 9:30 a.m. on Monday, May 15, 2017, in Seattle Washington." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 04/21/2017)
5/24/17	286	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "Plaintiffs-Appellees' motion for leave to supplement the record is GRANTED." (emt,)
		CERTIFICATE OF SERVICE Parties served by Ninth Circuit Court of Appeals. (Entered: 05/24/2017)
6/9/17	287	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589:

DATE	DOCKET NUMBER	PROCEEDINGS
		"The Law Professors' motion for leave to file a brief as amici curiae, see Dkt. 208, is granted." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 06/09/2017)
6/12/17	288	OPINION of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "We affirm in part and vacate in part the district court's preliminary injunction order. As to the remaining Defendants, we affirm the injunction as to Section 2(c), suspending entry of nationals from the six designated countries for 90 days; Section 6(a), suspending USRAP for 120 days; and Section 6(b), capping the entry of refugees to 50,000 in the fiscal year 2017. We vacate the portions of the injunction that prevent the Government from conducting internal reviews, as otherwise directed in Sections 2

DATE	DOCKET NUMBER	PROCEEDINGS
		and 6, and the injunction to the extent that it runs against the President. We remand the case to the district court with instructions to re-issue a preliminary injunction consistent with this opinion. **AFFIRMED in part; VACATED in part; and REMANDED with Instructions.** Each party shall bear its own costs on appeal." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 06/13/2017)
6/19/17	289	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "The Government's consent motion to issue the mandate, Dkt. No. 316, is GRANTED. The mandate shall issue immediately." (emt,)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)
6/19/17	290	MANDATE of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "The judgment of this Court, entered June 12, 2017, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at

DATE	DOCKET NUMBER	PROCEEDINGS
		the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)
6/19/17	291	AMENDED PRELIMINARY INJUNCTION. Signed by JUDGE DERRICK K. WATSON on 06/19/2017. (eps,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)
6/27/17	292	Appeal Remark re 271 Notice of Appeal, 9CCA NO. 17-15589: Letter addressed to the Ninth Circuit Court of Appeals from the Supreme Court of the United States, dated June 26, 2017 Re:

DATE	DOCKET NUMBER	PROCEEDINGS
		"The petition for a writ of certiorari in the above entitled case was filed on June 26, 2017 and placed on the docket June 26, 2017 as No. 16-1540." (emt,) No COS issued for this docket entry (Entered: 06/27/2017)
6/29/17	293	Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum Memorandum of Law in Support of Emergency Motion to Clarify, # 2 Exhibit Proposed Order, # 3 Certificate of Service) (Katyal, Neal) (Entered: 06/29/2017)
6/29/17	294	Declaration of Neal K. Katyal in Support of 293 Plaintiff's Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction,. (Attachments: # 1 Exhibit Ex. A, # 2 Exhibit Ex. B, # 3 Exhibit Ex. C, # 4 Exhibit Ex. D, # 5 Exhibit Ex. E, # 6 Certificate of Service) (Katyal, Neal) Modified on 6/30/2017 (emt,). (Entered: 06/29/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
6/29/17	295	EO: The Court partially lifts the April 3, 2017 stay in this matter for the limited purpose of considering Plaintiffs' Emergency Motion to Clarify Scope of Preliminary Injunction. Dkt. No. 293. Defendants shall file their opposition, limited to 20 pages, by Monday, July 3, 2017. Plaintiffs shall file any reply, limited to 15 pages, by Thursday, July 6, 2017. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/29/2017)
		* * * * *
7/3/17	301	MEMORANDUM in Opposition re 293 Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary In-

DATE	DOCKET NUMBER	PROCEEDINGS
		junction, filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Declaration of Lawrence E. Bartlett & Att. 1-3, # 2 Exhibit A: Department of State FAQs, # 3 Exhibit B: Emails from Rosenberg to Katyal, # 4 Exhibit C: Department of State Fact Sheet re Refugee Program, # 5 Exhibit D: Department of Homeland Security FAQs, # 6 Certificate of Service) (Rosenberg, Brad) (Entered: 07/03/2017)
		* * * * *
7/5/17	303	REPLY re 293 Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, filed by State of Hawaii. (Attachments: # 1 Exhibit Proposed Order, # 2 Certificate of Service) (Katyal, Neal) (Entered: 07/05/2017)
7/5/17	304	Declaration re 303 Reply, *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit F, # 2 Exhibit G, # 3 Exhibit H, # 4 Exhibit I,

DATE	DOCKET NUMBER	PROCEEDINGS
		# 5 Certificate of Service) (Katyal, Neal) (Entered: 07/05/2017)
		* * * * *
7/5/17	315	Errata re 303 Reply, *Proposed Order.* (Attachments: # 1 Errata Proposed Order, # 2 Certificate of Service) (Katyal, Neal) (Entered: 07/05/2017)
		* * * * *
7/6/17	322	ORDER DENYING PLAINTIFFS' EMERGENCY MOTION TO CLARIFY SCOPE OF PRELIMINARY INJUNCTION re 293— Signed by JUDGE DERRICK K. WATSON on 7/6/2017. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/06/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/6/17	324	**NOTICE OF APPEAL** as to 322 Order on Motion for Miscellaneous Relief,, by State of Hawaii. Filing fee $ 505, receipt number 0975-1895381. (Attachments: # 1 Exhibit Representation Statement, # 2 Certificate of Service) (Katyal, Neal) Modified on 7/7/2017 9CCA NO. 17-16366 (emt,). (Entered: 07/06/2017)
7/6/17	325	USCA Case Number 17-16366 for 324 Notice of Appeal filed by State of Hawaii. (emt,) CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/07/2017)
		* * * * *
7/7/17	327	ORDER of USCA as to 324 Notice of Appeal, filed by State of Hawaii, 9CCA NO. 17-16366: This appeal is DISMISSED for lack of jurisdiction. Plaintiffs' "Emergency Motion under FRAP 8 and Circuit Rule 27-3 for Injunction Pending Ap-

DATE	DOCKET NUMBER	PROCEEDINGS
		peal" is DENIED as moot. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/07/2017)
7/7/17	328	MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum, # 2 Exhibit Proposed Order on Motion to Enforce Preliminary Injunction, # 3 Exhibit Proposed Order Modifying Preliminary Injunction, # 4 Certificate of Service) (Katyal, Neal) (Entered: 07/07/2017)
7/7/17	329	Declaration re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, *of Neal K. Katyal.* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Certificate of Service) (Katyal, Neal) (Entered: 07/07/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
7/8/17	330	EO: The Court is in receipt of Plaintiffs' Motion to Enforce or, In the Alternative, to Modify Preliminary Injunction. Dkt. No. 328. Defendants shall file their opposition by Tuesday, July 11, 2017. Plaintiffs shall file any reply by Wednesday, July 12, 2017. The parties' opposition and reply briefs are limited to no more than 15 pages each. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/08/2017)
		* * * * *
7/10/17	335	EO: The Court partially lifts the April 3, 2017 stay in this matter for the limited purpose of considering Plaintiffs' Motion to En-

DATE	DOCKET NUMBER	PROCEEDINGS
		force or, In the Alternative, to Modify Preliminary Injunction. Dkt. No. 328. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/10/2017)
		* * * * *
7/11/17	338	MEMORANDUM in Opposition re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Rosenberg, Brad) (Entered: 07/11/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/12/17	342	REPLY re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, filed by State of Hawaii. (Attachments: # 1 Certificate of Service) (Katyal, Neal) (Entered: 07/12/2017)
7/12/17	343	Declaration re 342 Reply *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit G, # 2 Exhibit H, # 3 Exhibit I, # 4 Certificate of Service) (Katyal, Neal) (Entered: 07/12/2017)
7/13/17	344	Declaration re 342 Reply *Third Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit J, # 2 Exhibit K, # 3 Exhibit L, # 4 Certificate of Service) (Katyal, Neal) (Entered: 07/13/2017)
7/13/17	345	ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO ENFORCE, OR, IN THE ALTERNATIVE, TO MODIFY PRELIMINARY INJUNCTION re 328—Signed by JUDGE DERRICK K. WATSON on

DATE	DOCKET NUMBER	PROCEEDINGS
		7/13/2017. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/13/2017)
7/14/17	346	**NOTICE OF APPEAL** as to 345 Order on Motion for Miscellaneous Relief,, by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. 9CCA NO. 17-16426 (Bennett, Michelle) Modified on 7/14/2017 (emt,). (Entered: 07/14/2017)
7/14/17	347	USCA Case Number 17-16426 for 346 Notice of Appeal filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald

DATE	DOCKET NUMBER	PROCEEDINGS
		J. Trump. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/14/2017)
		* * * * *
7/19/17	349	Appeal Remark re 271 Notice of Appeal, re 9CCA NO. 17-15589: ORDER issued by the U.S. Supreme Court (16-1540) ~ "The Government's motion seeking clarification of our order of June 26, 2017, is denied. The District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance is stayed pending resolution of the Government's appeal to the Court of Appeals for the Ninth Circuit." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifi-

DATE	DOCKET NUMBER	PROCEEDINGS
		cations were served by first class mail on the date of this docket entry (Entered: 07/19/2017)
7/19/17	350	Appeal Remark re 346 Notice of Appeal, re 9CCA NO. 17-16426: ORDER issued by the U.S. Supreme Court (16-1540) ~ "The Government's motion seeking clarification of our order of June 26, 2017, is denied. The District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance is stayed pending resolution of the Government's appeal to the Court of Appeals for the Ninth Circuit." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/19/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/24/17	352	ORDER of USCA as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-16426: "The Government's motion to stay pending appeal, Dkt. No. 3, is denied as moot. The briefing schedule entered at Dkt. No. 2 is vacated. The parties' joint motion to expedite the briefing and consideration of the merits of this appeal, Dkt. No. 6, is granted." (emt,) CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/24/2017)
		* * * * *
7/28/17	354	ORDER of USCA CA No. 17-16426 as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump The Court has received an Emer-

DATE	DOCKET NUMBER	PROCEEDINGS
		gency Motion to Intervene (Dkt. #10). Any response shall be filed on or before 12:00 p.m. PST, Wednesday, August 2, 2017. Proposed-Intervenor may file a reply on or before 12:00 p.m. PST, Thursday, August 3, 2017. (eps,)
		CERTIFICATE OF SERVICE Participants served by 9CCA (Entered: 07/28/2017)
8/3/17	355	ORDER of USCA as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-16426: "The Emergency Motion to Intervene (Dkt. # 10) is DENIED." "The United States Committee for Refugees and Immigrants may file a brief as amicus curiae no later than Wednesday, August 9, 2017. If Appellants wish to respond to any argument raised in that brief, they may do so no later than 12:00 p.m. PST on Friday, August 11, 2017."

DATE	DOCKET NUMBER	PROCEEDINGS
		(emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 08/03/2017)
		* * * * *
8/9/17	358	ORDER of USCA as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-16426: "This case shall be set for oral argument on Monday, August 28, 2017, at 2:00pm in Seattle, Washington." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 08/09/2017)
8/29/17	359	MANDATE of USCA as to 324 Notice of Appeal, filed by State of Hawaii, 9CCA NO. 17-16366: "The judgment of this Court, entered July 07, 2017, takes effect this date. This constitutes the formal mandate of this Court

DATE	DOCKET NUMBER	PROCEEDINGS
		issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 08/29/2017)
9/7/17	360	OPINION of USCA as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-16426: The district court's order modifying the preliminary injunction is **AFFIRMED.** "The mandate shall issue five days after the filing of this opinion." (emt,)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 09/07/2017)
9/7/17	361	OPINION of USCA as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-16426: The district court's order modifying the preliminary injunction is **AFFIRMED.** "The mandate shall issue five days after the filing of this opinion." (Attachments: # 1 **Webcite**) (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. Modified on 9/14/2017 (emt,). (Entered: 09/14/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
9/14/17	362	ORDER of USCA as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-16426: "In light of the Supreme Court's September 12, 2017 order, the mandate in this case is stayed with regards to the portions of opinion that address refugees covered by formal assurances pending further action of the Court. The modified injunction requiring the Government to allow grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States, however, remains in effect as it has never been stayed and is not stayed by the Supreme Court's September 12, 2017 order." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 09/14/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
10/6/17	363	MOTION to Lift Stay, Increase Word Limit, and Set Briefing Schedule Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit Proposed Order, # 2 Certificate of Service) (Katyal, Neal) (Entered: 10/06/2017)
		* * * * *
10/6/17	366	EO: Upon consideration of Plaintiffs' Motion to Lift the Stay, and to Increase the Word Limit and Set a Schedule for Briefing on Plaintiffs' Forthcoming Motion for a Temporary Restraining Order ("Motion") (Dkt. No. 363), and good cause appearing therefor, the Court's April 3, 2017 stay of the proceedings in this case is hereby lifted (Dkt. No. 279). Plaintiffs shall file their Motion for Leave to File a Third Amended Complaint and Motion for a Temporary Restraining Order by 6:00AM Hawaii Standard Time ("H.S.T.") on October 10, 2017. The Government shall file its response to both Plaintiffs' Motion for Leave to File a Third Amended Complaint and Plaintiffs' Motion for a Temporary

DATE	DOCKET NUMBER	PROCEEDINGS
		Restraining Order by 6:00AM H.S.T. on October 14, 2017. Plaintiffs shall file their reply briefs by 12:00 Noon H.S.T. on October 15, 2017. The Court intends to rule on Plaintiffs' Motions without a hearing. The request to increase the word limit associated with the Motion for a Temporary Restraining Order is denied. IT IS SO ORDERED. (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 10/06/2017)
10/10/17	367	MOTION for Leave to File *Third Amended Complaint* Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit [Proposed] Third Amended Complaint, # 2 Exhibit [Proposed] Ex. 1 to Third Amended Complaint, # 3 Exhibit [Pro-

DATE	DOCKET NUMBER	PROCEEDINGS
		posed] Ex. 2 to Third Amended Complaint., # 4 Exhibit [Proposed] Ex. 3 to Third Amended Complaint, # 5 Exhibit [Proposed] Ex. 4 to Third Amended Complaint, # 6 Exhibit [Proposed] Ex. 5 to Third Amended Complaint, # 7 Exhibit [Proposed] Ex. 6 to Third Amended Complaint, # 8 Exhibit [Proposed] Ex. 7 to Third Amended Complaint, # 9 Exhibit [Proposed] Ex. 8 to Third Amended Complaint, # 10 Exhibit [Proposed] Ex. 9 to Third Amended Complaint, # 11 Exhibit Proposed Order, # 12 Certificate of Service) (Katyal, Neal) (Entered: 10/10/2017)
10/10/17	368	MOTION for Temporary Restraining Order Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order, # 2 Exhibit Proposed Order, # 3 Certificate of Service) (Katyal, Neal) (Entered: 10/10/2017)
10/10/17	369	MOTION for Leave to Proceed Under Psyeudonyms and for In

DATE	DOCKET NUMBER	PROCEEDINGS
		Camera Review Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit Proposed Order, # 2 Certificate of Service) (Katyal, Neal) (Entered: 10/10/2017)
10/10/17	370	Declaration re 369 MOTION for Leave to Proceed Under Psyeudonyms and for In Camera Review, 368 MOTION for Temporary Restraining Order *of Deirdre Marie-Iha.* (Attachments: # 1 Exhibit A, Decl. of John Doe 1, # 2 Exhibit B, Decl. of John Doe 2, # 3 Exhibit C, Decl. of Jane Doe 3, # 4 Exhibit D, Decl. of John Doe 4, # 5 Exhibit E, Decl. of John Doe 5, # 6 Exhibit F, Decl. of Straney, # 7 Exhibit G, Decl. of Chan, # 8 Exhibit H, Decl. of Sharma, # 9 Exhibit I, Decl. of Elshikh, # 10 Exhibit J, Decl. of Szigeti, # 11 Exhibit K, Decl. of Salaveria, # 12 Exhibit L, Decl. of Ouansafi, # 13 Certificate of Service) (Marie-Iha, Deirdre) (Entered: 10/10/2017)
10/10/17	371	EO: The Government is ordered to provide, with its response to Plaintiffs' filings, a copy of the September 15, 2017 Report sub-

DATE	DOCKET NUMBER	PROCEEDINGS
		mitted by the Secretary of Homeland Security, which is referenced in Section 1(h) of Proclamation No. 9645 entitled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats." The September 15, 2017 Report is due no later than 6:00AM H.S.T. on October 14, 2017. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 10/10/2017)
		* * * * *
10/13/17	376	NOTICE by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United

DATE	DOCKET NUMBER	PROCEEDINGS
		States of America re 371 Link,,, *Notice of In Camera, Ex Parte Lodging of Report Containing Classified Information and Objection to Review or Consideration of Report* John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Schwei, Daniel) (Entered: 10/13/2017)
10/13/17	377	Clerk's Office NOTICE OF RECEIPT of 376 Government's Report Containing Classified Information. (emt,) (Entered: 10/13/2017)
10/14/17	378	MEMORANDUM in Opposition re 368 MOTION for Temporary Restraining Order filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Bennett, Michelle) (Entered: 10/14/2017)
10/14/17	379	ORDER GRANTING 369 Plaintiffs' Motion for Leave for Doe Plaintiffs to Proceed Under Psyeudonym, and for *In Camera* Review of Doe Plaintiffs' and Doe Declarants' Signed Statements,

DATE	DOCKET NUMBER	PROCEEDINGS
		Signed by JUDGE DERRICK K. WATSON on 10/14/17. (apg, dist) <hr> CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 10/14/2017)
10/14/17	380	ORDER GRANTING 367 Plaintiffs' Motion for Leave to File Third Amended Complaint, Signed by JUDGE DERRICK K. WATSON on 10/14/17. (apg, dist) <hr> CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 10/14/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
10/15/17	381	***(Third)*** **AMENDED COMPLAINT** against All Defendants, filed by Ismail Elshikh, State of Hawaii, John Does 1 & 2, Muslim Association of Hawaii, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Certificate of Service) (Katyal, Neal) Modified on 10/16/2017 (emt,). (Entered: 10/15/2017)
10/15/17	382	REPLY re 368 MOTION for Temporary Restraining Order filed by Ismail Elshikh, John Does 1 & 2, Muslim Association of Hawaii, Inc., State of Hawaii. (Attachments: # 1 Certificate of Service) (Katyal, Neal) (Entered: 10/15/2017)
10/15/17	383	Declaration re 368 MOTION for Temporary Restraining Order. (Attachments: # 1 Exhibit M, Decl. of Former Nat'l Sec. Officials, # 2 Certificate of Service) (Katyal, Neal) (Entered: 10/15/2017)
10/16/17	384	MOTION for Leave to File *Response to Notice of In Camera, Ex Parte Lodging of Report* Neal

DATE	DOCKET NUMBER	PROCEEDINGS
		Katyal appearing for Plaintiffs Ismail Elshikh, John Does 1 & 2, Muslim Association of Hawaii, Inc., State of Hawaii (Attachments: # 1 Exhibit Proposed Response, # 2 Exhibit Proposed Order, # 3 Certificate of Service) (Katyal, Neal) forwarded to MAGISTRATE JUDGE KEVIN S. CHANG (Entered: 10/16/2017)
10/16/17	385	EO: Upon consideration of Plaintiffs' Motion for Leave to File a Response to Notice of In Camera, Ex Parte Lodging of Report Containing Classified Information ("Motion"), and good cause appearing therefor, the Motion is hereby GRANTED. Dkt. No. 384. Plaintiffs shall promptly file their Response to Notice of In Camera, Ex Parte Lodging of Report Containing Classified Information in the form attached to Plaintiffs' Motion. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the

DATE	DOCKET NUMBER	PROCEEDINGS
		Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 10/16/2017)
10/16/17	386	RESPONSE re 376 Notice (Other), *of In Camera, Ex Parte Lodging of Report* filed by Ismail Elshikh, John Doe 1, John Doe 2, Muslim Association of Hawaii, Inc., State of Hawaii. (Attachments: # 1 Certificate of Service) (Katyal, Neal) (Entered: 10/16/2017)
10/17/17	387	ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER re 368— Signed by JUDGE DERRICK K. WATSON on 10/17/2017. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 10/17/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
10/20/17	388	NOTICE by Ismail Elshikh, John Doe 1, John Doe 2, Muslim Association of Hawaii, Inc., State of Hawaii *(Joint) re: Stipulation to Convert TRO to Prelim. Injunction* Ismail Elshikh, John Doe 1, John Doe 2, Muslim Association of Hawaii, Inc., State of Hawaii. (Attachments: # 1 Exhibit Joint Stipulation to Convert TRO to Prelim. Injunction, # 2 Certificate of Service) (Katyal, Neal) (Entered: 10/20/2017)
10/20/17	389	JOINT STIPULATION TO CONVERT TEMPORARY RESTRAINING ORDER TO PRELIMINARY INJUNCTION re 368—Signed by JUDGE DERRICK K. WATSON on 10/20/2017. (emt,) CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket

DATE	DOCKET NUMBER	PROCEEDINGS
		entry (Entered: 10/20/2017)
10/20/17	390	PRELIMINARY INJUNCTION —Signed by JUDGE DERRICK K. WATSON on 10/20/2017. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 10/20/2017)
10/24/17	391	**NOTICE OF APPEAL** as to 390 Preliminary Injunction, 387 Order on Motion for TRO, by Elaine Duke, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Schwei, Daniel) Modified on 10/24/2017 9CCA NO. 17-17168 (emt,). (Entered: 10/24/2017)
10/24/17	392	USCA Case Number 17-17168 for 391 Notice of Appeal filed by U.S. Department of State, Elaine

DATE	DOCKET NUMBER	PROCEEDINGS
		Duke, U.S. Department of Homeland Security, Rex Tillerson, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 10/24/2017)
		* * * * *
10/25/17	394	ORDER of USCA CA No. 17-17168 as to 391 Notice of Appeal, filed by U.S. Department of State, Elaine Duke, U.S. Department of Homeland Security, Rex Tillerson, United States of America, Donald J. Trump (eps,)
		CERTIFICATE OF SERVICE Participants served by the Ninth Circuit Court of Appeals (Entered: 10/27/2017)
10/26/17	395	ORDER of USCA CA No. 17-17168 as to 391 Notice of Appeal, filed by U.S. Department of State, Elaine Duke, U.S. Department of Homeland Security, Rex Tillerson, United States of America, Donald J. Trump

DATE	DOCKET NUMBER	PROCEEDINGS
		(eps,)
		CERTIFICATE OF SERVICE
		Participants served by the Ninth Circuit Court of Appeals (Entered: 10/27/2017)
11/2/17	396	ORDER of USCA as to 391 Notice of Appeal, filed by U.S. Department of State, Elaine Duke, U.S. Department of Homeland Security, Rex Tillerson, United States of America, Donald J. Trump, 9CCA NO. 17-17168: "The States of New York, Illinois, California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Virginia, and the District of Columbia's Motion for Leave to Appear as Amici Curiae and File Brief in Support of Plaintiffs-Appellees in Opposition to Defendants-Appellants' Application for a Stay, Dkt. No. 15, is GRANTED."
		(emt,)
		CERTIFICATE OF SERVICE
		Parties served by the Ninth Circuit Court of Appeals. (En-

DATE	DOCKET NUMBER	PROCEEDINGS
		tered: 11/02/2017)
11/2/17	397	Appeal Remark re 271 Notice of Appeal re 9CCA NO. 17-15589: ORDER issued by the Supreme Court of the United States, No. 16-1540 ~ Certiorari is granted to "resolve a challenge to the temporary suspension of entry of aliens and refugees under Section 2(c) and Section 6 of Executive Order No. 13,780. Because those provisions of the Order have "expired by [their] own terms," the appeal no longer presents a "live case or controversy." *Burke v. Barnes*, 479 U.S. 361, 363 (1987). Following our established practice in such cases, **the judgment is therefore vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit with instructions to dismiss as moot the challenge to Executive Order No. 13,780.** United States v. Munsingwear, Inc., 340 U.S. 36, 39 (1950)." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals.

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 11/02/2017)
11/2/17	398	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "The mandate issued on June 19, 2017 is recalled as issued in error." re 290 Mandate (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 11/02/2017)
11/2/17	399	ORDER of USCA (On Remand from the United States Supreme Court) as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "In view of the Supreme Court order dated October 24, 2017, the court's opinion filed June 12, 2017, is vacated and the appeal is dismissed as moot. **The case is**

DATE	DOCKET NUMBER	PROCEEDINGS
		remanded to the district court with directions to dismiss as moot the challenge to Executive Order No. 13,780. The filing of this order shall serve as the court's mandate." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 11/02/2017)
11/2/17	400	EO: In view of the Ninth Circuit's November 2, 2017 order (Dkt. No. 399) vacating its June 12, 2017 opinion, dismissing the appeal as moot, and issuing the mandate in No. 17-15589, the Court hereby dismisses as moot the challenge to Executive Order No. 13,780. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this

DATE	DOCKET NUMBER	PROCEEDINGS
		docket entry Modified on 11/2/2017—Minute Order regenerated to the Ninth Circuit Court of Appeals on 11/2/2017. (emt,). (Entered: 11/02/2017)
11/13/17	401	ORDER of USCA as to 391 Notice of Appeal, filed by U.S. Department of State, Elaine Duke, U.S. Department of Homeland Security, Rex Tillerson, United States of America, Donald J. Trump, 9CCA NO. 17-17168: "The Government's motion for an emergency stay of the district court's preliminary injunction pending hearing and resolution of the expedited appeal is granted in part and denied in part. The preliminary injunction is stayed except as to "foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States," as set out below. *Trump v. Int'l Refugee Assistance Project ("IRAP")*, 137 S. Ct. 2080, 2088 (2017); *see also Nken v. Holder*, 556 U.S. 418, 434-35 (2009). "The injunction remains in force as to foreign nationals who have a "close familial relationship" with a

DATE	DOCKET NUMBER	PROCEEDINGS
		person in the United States. *IRAP*, 137 S. Ct. at 2088. Such persons include grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins. *See Hawaii v. Trump*, 871 F.3d 646, 658 (9th Cir. 2017). "As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading [Proclamation 9645]." *IRAP*, 137 S. Ct. at 2088." MOTION GRANTED IN PART; DENIED IN PART. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 11/13/2017)
11/20/17	402	ORDER of USCA as to 391 Notice of Appeal, filed by U.S. Department of State, Elaine Duke, U.S.

DATE	DOCKET NUMBER	PROCEEDINGS
		Department of Homeland Security, Rex Tillerson, United States of America, Donald J. Trump, 9CCA NO. 17-17168: "States' Emergency Motion to Intervene Under Federal Rule 24 and Circuit Rule 27-3 (Dkt. 11) is DENIED. The States of Washington, California, Maryland, Massachusetts, New York, and Oregon may proceed as amici under the timeline specified in the Court's October 26, 2017 Order." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 11/20/2017)
12/4/17	403	MANDATE of USCA CA No. 17-16426 as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump The judgment of this Court, entered September 07, 2017, takes effect this date. This constitutes the formal mandate of this Court issued pursu-

DATE	DOCKET NUMBER	PROCEEDINGS
		ant to Rule 41(a) of the Federal Rules of Appellate Procedure. (eps,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 12/04/2017)
12/4/17	404	ORDER IN PENDING CASE of USCA CA NO. 17-17168 as to 391 Notice of Appeal, filed by U.S. Department of State, Elaine Duke, U.S. Department of Homeland Security, Rex Tillerson, United States of America, Donald J. Trump "Supreme Court Letter Received" Received order from the Supreme Court dated 12/04/2017 regarding: The application for a stay presented to Justice Kennedy and by him referred to the Court is granted, and the District Court's October 20, 2017 order granting a preliminary injunction is stayed

DATE	DOCKET NUMBER	PROCEEDINGS
		pending disposition of the Government's appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the Government's petition for a writ of certiorari, if such writ is sought. If a writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for a writ of certiorari, this order shall terminate when the Court enters its judgment. In light of its decision to consider the case on an expedited basis, we expect that the Court of Appeals will render its decision with appropriate dispatch. Justice Ginsburg and Justice Sotomayor would deny the application. (eps,)
		CERTIFICATE OF SERVICE Participants served by the Ninth Circuit Court of Appeals (Entered: 12/04/2017)
12/22/17	405	OPINION of USCA as to 391 Notice of Appeal, filed by U.S. Department of State, Elaine Duke, U.S. Department of Homeland Security, Rex Tillerson, United States of America, Donald J.

DATE	DOCKET NUMBER	PROCEEDINGS
		Trump, 9CCA NO. 17-17168: "For all of these reasons, we affirm in part and vacate in part the district court's preliminary injunction order. We narrow the scope of the injunction to give relief only to those with a credible bonafide relationship with the United States, pursuant to the Supreme Court's decision in *IRAP*, 137 S. Ct. at 2088. In light of the Supreme Court's order staying this injunction pending "disposition of the Government's petition for a writ of certiorari, if such writ is sought," we stay our decision today pending Supreme Court review. *Trump v. Hawai'i*, No. 17A550, — S. Ct. —, 2017 WL 5987406 (Dec. 4, 2017). Because we conclude that Plaintiffs have shown a likelihood of success on their statutory claims, we need not reach their Establishment Clause or Due Process claims." **AFFIRMED IN PART, VACATED IN PART.** (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered:

DATE	DOCKET NUMBER	PROCEEDINGS
		12/22/2017)
12/22/17	406	**ORDER of USCA** as to 391 Notice of Appeal, filed by U.S. Department of State, Elaine Duke, U.S. Department of Homeland Security, Rex Tillerson, United States of America, Donald J. Trump, 9CCA NO. 17-17168: "The opinion disposition filed on December 22, 2017, is **withdrawn** and a new opinion disposition is filed concurrently with this order.", re 405. (emt,)
		Attachments: # 1 **OPINION, 9CCA NO. 17-17168:** "For all of these reasons, we affirm in part and vacate in part the district court's preliminary injunction order. We narrow the scope of the injunction to give relief only to those with a credible bonafide relationship with the United States, pursuant to the Supreme Court's decision in *IRAP*, 137 S. Ct. at 2088. In light of the Supreme Court's order staying this injunction pending "disposition of the Government's petition for a writ of certiorari, if such writ is sought," we

DATE	DOCKET NUMBER	PROCEEDINGS
		stay our decision today pending Supreme Court review. *Trump v. Hawai'i*, No. 17A550, S. Ct., 2017 WL 5987406 (Dec. 4, 2017). Because we conclude that Plaintiffs have shown a likelihood of success on their statutory claims, we need not reach their constitutional claims." **AFFIRMED IN PART, VACATED IN PART.** (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals
		Additional attachment(s) added on 12/27/2017: # 2 Webcite (emt,). Modified on 12/27/2017 to add Website received by Ninth Circuit Court of Appeals on 12/27/2017. (emt,). (Entered: 12/22/2017)
1/11/18	407	Appeal Remark re 391 Notice of Appeal, 9CCA NO. 17-17168: Letter from the Supreme Court of the United States to the Ninth Circuit Court of Appeals, dated January 5, 2018 ~ "The petition for a writ of certiorari in the

DATE	DOCKET NUMBER	PROCEEDINGS
		above entitled case was filed on January 5, 2018 and placed on the docket January 5, 2018 as No. 17-965." (emt,) No COS issued for this docket entry (Entered: 01/11/2018)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil Action No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII, ISMAIL ELSHIKH, JOHN DOES 1 & 2, AND MUSLIM ASSOCIATION OF HAWAII, INC., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; ELAINE DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

Filed: Oct. 15, 2017

THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The State of Hawaii, Dr. Ismail Elshikh, John Does 1 and 2, and the Muslim Association of Hawaii bring this suit to challenge the President's continuing efforts to impose a sweeping policy banning the entry of refugees and nationals of Muslim-majority countries.

2. On September 24, 2017, the President released the most recent iteration of this policy: a Proclamation entitled "Enhancing Vetting Capabilities and Pro-

cesses for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats" ("EO-3").[1] EO-3 suffers from the same statutory and constitutional defects as its precursors.

3. The Immigration and Nationality Act ("INA") mandates that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of * * * nationality." 8 U.S.C. § 1152(a)(1)(A).

4. EO-3 indefinitely bars the issuance of immigrant and non-immigrant visas to nationals of six Muslim-majority countries.

5. The INA permits the President to "suspend the entry of * * * aliens" under 8 U.S.C. § 1182(f) only when he finds their entry "would be detrimental to the interests of the United States. From its inception and throughout United States history, Section 1182(f) has always been understood to encompass authority for the President to exclude aliens akin to subversives, war criminals, or the statutorily inadmissible, or to block the admissions of foreigners in times of exigency when it is impracticable for Congress to act.

6. EO-3 lacks the findings necessary to support its indefinite travel bans. And it bars the entry of classes of aliens that bear no resemblance to subversives, war criminals, or the inadmissible, in the absence of an exi-

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[1] As of this filing, President Trump's September 24, 2017 Proclamation has not yet been published in the Federal Register. A copy of the Proclamation published on the White House website is attached as Exhibit 1, and is available at https://goo.gl/XvFZZ9.

gency, and in a situation where Congress could plainly act.

7. The Establishment Clause prohibits any "law respecting an establishment of religion." U.S. Const. amend. I. "A law that has a religious, not secular, purpose violates [the Establishment Clause], as does one that officially prefers one religious denomination over another." *Washington* v. *Trump*, 847 F.3d 1151, 1167 (9th Cir. 2017).

8. EO-3, which indefinitely excludes a class of aliens that is overwhelmingly Muslim, is the latest outgrowth of the President's stated aim to enact a "total and complete shutdown of Muslims entering the United States."

9. EO-3 will go into effect at 6:01 PM HST on October 17, 2017. When it does, it will immediately inflict grievous harm on Plaintiffs. Like its precursors, it will prevent the University of Hawaii from recruiting and retaining qualified individuals, impair the State's tourism industry, undermine its refugee resettlement program, thwart its nondiscrimination laws, and effect an unconstitutional establishment of religion. It will also bar Dr. Elshikh, John Doe 1, and John Doe 2—as well as thousands of similarly situated individuals—from seeing close family members, impair their livelihoods, and denigrate them as Muslims and as equal citizens. And EO-3 will inhibit the Muslim Association of Hawaii from welcoming new members and visitors, and subject it to discrimination at the hands of its own government.

10. Because EO-3 is as unlawful and unconstitutional as its precursors, and because it will inflict the same grave harms, Plaintiffs file this Third Amended Complaint ("TAC" or "Complaint") adding allegations with respect to EO-3 and asking that this Court enjoin the enforcement of Sections 2(a)-(c), (e), (g), and (h) of EO-3. Because EO-2 has not been revoked, and continues to inflict widespread harm on Plaintiffs and the public, Plaintiffs continue to ask that this Court enjoin the enforcement of Section 2(c), 6(a), and 6(b) of EO-2.

JURISDICTION AND VENUE

11. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because this action arises under the U.S. Constitution, the Administrative Procedure Act ("APA"), the INA, and other federal statutes.

12. The Court is authorized to award the requested declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, the APA, 5 U.S.C. § 706, and its equitable powers.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (e)(1). A substantial part of the events giving rise to this claim occurred in this District, and each Defendant is an officer of the United States sued in his or her official capacity.

PARTIES

I. PLAINTIFFS

A. The State of Hawaii

14. Plaintiff State of Hawaii is the nation's most ethnically diverse State.

15. David Yutaka Ige is the Governor of Hawaii, the chief executive officer of the State of Hawaii. The Governor is responsible for overseeing the operations of the state government, protecting the welfare of Hawaii's citizens, and ensuring that the laws of the State are faithfully executed.

16. Douglas S. Chin is the Attorney General of Hawaii, the chief legal officer of the State. The Attorney General is charged with representing the State in Federal Court on matters of public concern.

17. Hawaii has a substantial foreign-born population. Over 250,000 foreign-born individuals reside in the State.[2] These individuals comprise approximately 20% of the State's labor force and 22.5% of its business owners.[3]

18. Thousands of foreign-born individuals living in Hawaii obtain lawful permanent resident status each year.[4] Since 2009, more than 100 of the individuals who obtained lawful permanent status have been na-

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[2] United States Census Bureau, *2016 American Community Survey 1-Year Estimates*, https://goo.gl/IGwJyf.

[3] The Fiscal Policy Institute, *Immigrant Small Business Owners*, at 24 (June 2012), https://goo.gl/vyNK9W.

[4] U.S. Department of Homeland Security, *Lawful Permanent Residents Supplemental Table 1: Persons Obtaining Lawful Permanent Resident Status by State or Territory of Residence and Region and Country of Birth Fiscal Year 2015*, https://goo.gl/ELYIkn.

tionals of countries designated by both EO-2 and EO-3.[5]

19. Hawaii has a large foreign-born student population. The State currently is home to approximately 10,800 foreign-born students, many of whom are nationals of the countries designated by both EO-2 and EO-3.[6] In the 2016-2017 school year, Hawaii's foreign-born students contributed over $480 million to Hawaii's economy through the payment of tuition and fees, living expenses, and other activities. These foreign-born students supported 5,093 jobs and generated more than $32 million in state tax revenues during that time.[7]

20. The University of Hawaii enrolls a large number of foreign-born students. Its student population includes 973 international students, 526 of them graduate students, enrolled with student visas. Twenty of those international students are nationals of countries designated by both EO-2 and EO-3. In the spring of

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[5] *See id.* These figures are incomplete, as DHS has withheld data pertaining to residents from several of the designated countries for each of those years.

[6] Hawaii Department of Business, Economic Development & Tourism, *The Economic Impact of International Students in Hawaii—2017 Update*, at 8 (July 2017), https://goo.gl/s7q6JV; *see also* U.S. Chamber of Commerce et al., *Help Wanted: The Role of Foreign Workers in the Innovation Economy*, at 21 (2013), https://goo.gl/c3BYBu.

[7] *The Economic Impact of International Students in Hawaii—2017 Update*, *supra*, at 3, 8-9.

2017, 23 students enrolled at the University of Hawaii were nationals of the countries designated by EO-2.[8]

21. The University of Hawaii regularly receives applications from, and offers admissions to, international students from the countries designated by both EO-2 and EO-3. For the fall of 2017, the University received 45 graduate applications from individuals who are nationals of the countries designated by both EO-2 and EO-3, and extended offers to at least 18 applicants. For the spring of 2018, the University received 5 graduate applications from individuals who are nationals of the designated countries.

22. The University of Hawaii also employs approximately 313 international faculty and scholars from 48 different countries. Numerous permanent and visiting faculty members at the University are nationals of countries designated by both EO-2 and EO-3. In the spring of 2017, the University had 29 visiting faculty members who were nationals of the countries designated by EO-2 and 28 visiting faculty members who were nationals of the countries designated by EO-3.[9]

23. Tourism is Hawaii's "lead economic driver."[10] In 2016, before any of the President's travel bans were

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[8] *See* Dkt. No. 66-6, ¶ 7 (Supplemental Decl. of Risa Dickson).

[9] *See id.*

[10] Hawaii Tourism Authority, *2016 Annual Report to the Hawaii State Legislature*, at 20, https://goo.gl/T8uiWW.

implemented, Hawaii welcomed 8.94 million visitors accounting for a record $15.6 billion in spending.[11]

24. The Office of Community Services ("OCS") operates refugee resettlement programs for the State. There are two components to OCS's refugee resettlement activities: the "Refugee Social Services Program," through which the State contracts with private organizations to provide job training and placement services to refugees in Hawaii; and "the Refugee Cash Assistance Program," through which the State provides up to eight months of cash assistance to refugees in Hawaii from the date of their arrival in the United States.[12] These programs are supported by federal grants. *See* 45 C.F.R. part 400.

25. In fiscal year 2017, the State received $75,000 in federal grants for its Refugee Services Program, and contracted with private organizations to expend those funds. As of June 2017, the Refugee Services Program provided English language instruction to 36 refugees, employment and job search services to 6 refugees, and reached 48 refugees total.

26. The State also receives money from the federal government for each refugee it resettles of a certain income level, pursuant to the Refugee Cash Assistance Program. *See* Haw. Admin. Rules § 17-661 *et seq.* In fiscal year 2017, the federal government awarded

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[11] Hawaii Tourism Authority, *Hawaii Tourism Industry Set New Records in 2016* (Jan. 30, 2017), https://goo.gl/KBENwb.

[12] State of Hawaii, Office of Community Services, *Refugee And Entrant Assistance Program*, https://goo.gl/dHn8hR (last updated Aug. 18, 2017).

$17,919 to the State of Hawaii for Refugee Cash Assistance.

27. The State of Hawaii bars the establishment of religion and many forms of invidious discrimination. Article I, § 4 of the Hawaii Constitution provides that "[n]o law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof." The State's laws also declare that the practice of discrimination "because of race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability" is against public policy. Haw. Rev. Stat. Ann. § 381-1; *accord id.* §§ 489-3, 515-3.

28. The State has an interest in protecting the health, safety, and welfare of its residents and in safeguarding its ability to enforce state law. The State also has an interest in "assuring that the benefits of the federal system," including the rights and privileges protected by the United States Constitution and federal statutes, "are not denied to its general population." *Alfred L. Snapp & Sons, Inc.* v. *Puerto Rico*, 458 U.S. 592, 608 (1982). The State's interests extend to all of the State's residents, including individuals who suffer indirect injuries and members of the general public.

B. Dr. Ismail Elshikh

29. Plaintiff Ismail Elshikh, PhD, is an American citizen of Egyptian descent.

30. Dr. Elshikh is the Imam of the Muslim Association of Hawaii. He is a leader within Hawaii's Islamic community, and has been a resident of Hawaii for over a decade.

31. Dr. Elshikh's wife is of Syrian descent and is also a resident of Hawaii. Dr. Elshikh and his wife have five children, who are all American citizens and residents of Hawaii.

32. Dr. Elshikh has four brothers-in-law who are Syrian nationals, living in Syria. On October 5, 2017, one of Dr. Elshikh's brothers-in-law filed an application for a tourist visa to visit Dr. Elshikh and his family in the United States.

C. John Doe 1

33. Plaintiff John Doe 1 is an American citizen of Yemeni descent.

34. Doe 1 has been a resident of Hawaii for almost 30 years. Doe 1's wife and four children are U.S. citizens as well.

35. Doe 1, his wife, and his children are Muslims and members of the mosque where Dr. Elshikh is Imam.

36. One of Doe 1's daughters is married to a national of Yemen who lives in Malaysia. In September 2015, Doe 1's daughter filed an I-130 visa petition on behalf of her husband to allow him to immigrate to the United States as the spouse of a U.S. citizen. The I-130 Petition was approved in June 2017. Doe 1's family then filed a visa application on behalf of Doe 1's son-in-law.

37. Doe 1's son-in-law's visa application is still pending. Under normal visa processing procedures, he would receive a visa with the next three to twelve months.

D. John Doe 2

38. Plaintiff John Doe 2 is a legal permanent resident of the United States who was born in Iran.

39. Doe 2 is a resident of Hawaii, and a Professor at the University of Hawaii.

40. Doe 2's mother is an Iranian national living in Iran. Several months ago, she filed an application for a tourist visa to visit Doe 2. Her application is currently pending.

41. Other close relatives of Doe 2 who are Iranian nationals living in Iran have filed applications for tourist visas to visit Doe 2. They recently underwent visa interviews. They intend to visit Doe 2 as soon as their applications are approved.

E. The Muslim Association of Hawaii

42. Plaintiff Muslim Association of Hawaii, Inc. (the "Association") is the only formal Muslim organization in the State of Hawaii.

43. Hakim Ouansafi is the Chairman of the Association.

44. The Association has approximately 5,000 members, approximately 4,500 of whom reside on Oahu and 500 of whom reside on the other islands.

45. The Association owns and operates a mosque in Honolulu, Hawaii. Dr. Ismail Elshikh is the Imam of the mosque, which hosts weekly Friday prayer gatherings. Over 300 people attend the prayer gatherings every week, including visitors and students who are nationals of countries designated by both EO-2 and EO-3.

II. DEFENDANTS

46. Defendant Donald J. Trump is the President of the United States.

47. Defendant U.S. Department of Homeland Security ("DHS") is a federal agency responsible for implementing and enforcing the INA, EO-2, and EO-3. DHS is a department of the Executive Branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f). United States Customs and Border Protection ("CBP") is a component of DHS that is responsible for detaining and removing aliens barred by EO-2 and EO-3 who arrive at air, land, and sea ports across the United States, including Honolulu International Airport and Kona International Airport.

48. Defendant Elaine Duke is the Acting Secretary of Homeland Security. She is responsible for implementing and enforcing the INA, EO-2, and EO-3, and she oversees CBP. She is sued in her official capacity.

49. Defendant U.S. Department of State is a federal agency responsible for implementing the U.S. Refugee Admissions Program, EO-2, and EO-3. The Department of State is a department of the Executive Branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f).

50. Defendant Rex Tillerson is the Secretary of State. He oversees the Department of State's implementation of the U.S. Refugee Admissions Program, EO-2, and EO-3. The Secretary of State has authority to determine and implement certain visa procedures for non-citizens. Secretary Tillerson is sued in his official capacity.

51. Defendant United States of America includes all government agencies and departments responsible for the implementation of the INA, EO-2, and EO-3, and for detaining and removing aliens barred by EO-2 and EO-3 who arrive at air, land, and sea ports across the United States, including Honolulu International Airport and Kona International Airport.

ALLEGATIONS

I. THE TRAVEL BANS

A. President Trump's Campaign Statements

52. President Trump repeatedly campaigned on the promise that, if elected, he would ban Muslim immigrants and refugees from entering the United States.

53. On July 11, 2015, Mr. Trump claimed, falsely, that Christian refugees from Syria are blocked from entering the United States. In a speech in Las Vegas, Mr. Trump said, "If you're from Syria and you're a Christian, you cannot come into this country, and they're the ones that are being decimated. If you are Islamic * * * it's hard to believe, you can come in so easily."[13]

54. On December 7, 2015, Mr. Trump issued a press release entitled "Donald J. Trump Statement on Preventing Muslim Immigration." It stated that "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States." The release

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[13] Louis Jacobson, *Donald Trump says if you're from Syria and a Christian, you can't come to the U.S. as a refugee*, PolitiFact (July 20, 2015, 10:00 AM EDT), https://goo.gl/fucYZP.

asserted that "there is great hatred towards Americans by large segments of the Muslim population."[14]

55. The next day, Mr. Trump compared his proposal to President Franklin Roosevelt's internment of Japanese Americans during World War II, saying, "[Roosevelt] did the same thing."[15] When asked what the customs process would look like for a Muslim non-citizen attempting to enter the United States, Mr. Trump said, "[T]hey would say, are you Muslim?" The interviewer responded: "And if they said 'yes,' they would not be allowed into the country." Mr. Trump said: "That's correct."[16]

56. During a Republican primary debate in January 2016, Mr. Trump was told that his "comments about banning Muslims from entering the country created a firestorm," and asked whether he wanted to "rethink this position." He said, "No."[17]

57. In March 2016, Mr. Trump stated, during an interview, "I think Islam hates us." He went on to say: "[W]e can't allow people coming into this country

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[14] Press Release, Donald J. Trump for President, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015). A copy of this press release is attached as Exhibit 2.

[15] Jenna Johnson, *Donald Trump says he is not bothered by comparisons to Hitler*, The Washington Post (Dec. 8, 2015), https://goo.gl/6G0oH7.

[16] Nick Gass, *Trump not bothered by comparisons to Hitler*, Politico (Dec. 8, 2015, 7:51 AM EST), https://goo.gl/IkBzPO.

[17] The American Presidency Project, *Presidential Candidates Debates: Republican Candidates Debate in North Charleston, South Carolina* (Jan. 14, 2016), https://goo.gl/se0aCX.

who have this hatred of the United States * * * [a]nd of people that are not Muslim." Mr. Trump was then asked, "Is there a war between the west and radical Islam, or between the west and Islam itself?" He replied: "It's very hard to separate because you don't know who is who."[18]

58. Later that month, Mr. Trump said: "We're having problems with the Muslims, and we're having problems with Muslims coming into the country." Mr. Trump called for surveillance of mosques in the United States, saying: "You have to deal with the mosques, whether we like it or not, I mean, you know, these attacks aren't coming out of—they're not done by Swedish people." And he said: "This all happened because, frankly, there's no assimilation. They are not assimilating * * * . They want to go by sharia law."[19]

59. As the campaign progressed, Mr. Trump sometimes couched the "total and complete shutdown of Muslims" in different terms. In a June 2016 speech, Mr. Trump characterized the proposal as "suspend[ing] immigration from areas of the world where there's a proven history of terrorism against the United States, Europe or our allies until we fully understand how to end these threats." But he linked that idea to the

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[18] *Anderson Cooper 360 Degrees: Exclusive Interview With Donald Trump* (CNN television broadcast Mar. 9, 2016, 8:00 PM EST), *transcript available at* https://goo.gl/y7s2kQ.

[19] Jenna Johnson & Abigail Hauslohner, *'I think Islam hates us': A timeline of Trump's comments about Islam and Muslims*, The Washington Post (May 20, 2017), https://goo.gl/zmcJ4o. A copy of this article is attached as Exhibit 3.

need to stop "importing radical Islamic terrorism to the West through a failed immigration system."[20]

60. In the same speech, Mr. Trump criticized his opponent for "her refusal to say the words 'radical Islam,'" stating: "Here is what she said, exact quote, 'Muslims are peaceful and tolerant people, and have nothing whatsoever to do with terrorism.' That is [my opponent]." Mr. Trump also warned that his opponent would "admit[] hundreds of thousands of refugees from the Middle East" who would "try[] to take over our children and convince them * * * how wonderful Islam is." And Mr. Trump stated that the Obama administration had "put political correctness above common sense," but said that he "refuse[d] to be politically correct."[21]

61. That same month, in an interview on a talk radio show, Mr. Trump articulated his view of the President's power to follow through on these promises, claiming: "The president has the right to ban any group or anybody * * * that he feels is going to do harm to our country. * * * They have an absolute right * * * ."[22]

62. On July 24, 2016, Mr. Trump was asked: "The Muslim ban. I think you've pulled back from it, but

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[20] Ryan Teague Beckwith, *Read Donald Trump's Speech on the Orlando Shooting*, Time (June 13, 2016, 4:36 PM EDT), https://goo.gl/kgHKrb.

[21] *Id.*

[22] Sopan Deb, *Trump continues to question Obama's commitment to fighting terror*, CBS News (June 14, 2016), https://goo.gl/rMMyCo.

you tell me." Mr. Trump responded: "I actually don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. People were so upset when I used the word Muslim. Oh, you can't use the word Muslim. Remember this. And I'm okay with that, because I'm talking territory instead of Muslim."[23]

63. During an October 9, 2016 Presidential Debate, Mr. Trump was asked: "Your running mate said this week that the Muslim ban is no longer your position. Is that correct? And if it is, was it a mistake to have a religious test?" Mr. Trump replied: "The Muslim ban is something that in some form has morphed into a[n] extreme vetting from certain areas of the world." When asked to clarify whether "the Muslim ban still stands," Mr. Trump said, "It's called extreme vetting."[24]

64. On December 21, 2016, Mr. Trump was asked whether he had decided "to rethink or re-evaluate [his] plans to create a Muslim registry or ban Muslim immigration to the United States." Mr. Trump replied: "You know my plans. All along, I've been proven to be right."[25]

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[23] *Meet the Press* (NBC television broadcast July 24, 2016), *transcript available at* https://goo.gl/jHc6aU. A copy of this transcript is attached as Exhibit 4.

[24] The American Presidency Project, *Presidential Debates: Presidential Debate at Washington University in St. Louis, Missouri* (Oct. 9, 2016), https://goo.gl/lIzf0A.

[25] *President-Elect Trump Remarks in Palm Beach, Florida*, C-SPAN (Dec. 21, 2016), https://goo.gl/JlMCst.

B. The First Travel Ban ("EO-1")

65. Within a week of taking office, President Trump acted upon his campaign promises to restrict Muslim immigration, curb refugee admissions, and prioritize non-Muslim refugees.

66. On January 27, 2017, President Trump signed an Executive Order entitled, "Protecting the Nation From Foreign Terrorist Entry into the United States" ("EO-1"). When signing EO-1, President Trump read the title, looked up, and said: "We all know what that means."[26]

67. EO-1 imposed an immediate, 90-day ban on entry by nationals of seven overwhelmingly Muslim countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. The Order also suspended the U.S. Refugee Admissions Program ("USRAP") for 120 days, lowered the cap on annual refugee admissions, and indefinitely barred Syrian refugees. The USRAP suspension included a targeted carve-out for refugees who were "religious minorit[ies]" in their home countries.

68. EO-1 established a process for expanding its travel bans to additional countries. It directed the Secretary of State to "request [that] all foreign governments" provide the United States with information necessary to determine whether its nationals are security threats, and directed the Secretaries of Homeland Security and State to "submit to the President a list of

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[26] *Trump Signs Executive Orders at Pentagon*, ABC News (Jan. 27, 2017), https://goo.gl/7Jzird.

countries recommended for inclusion" in the ban from among any countries that did not provide the information requested. The order also authorized the Secretaries of State and Homeland Security to "submit to the President the names of any additional countries recommended for similar treatment" in the future.

69. In a January 27, 2017 interview with Christian Broadcasting Network, President Trump explained that Christians would be given priority under EO-1. He said: "Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair, everybody was persecuted in all fairness, but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair. So we are going to help them."[27]

70. The day after signing the first Executive Order, President Trump's advisor, Rudolph Giuliani, explained on television how the Executive Order was developed. He said: "[W]hen [Mr. Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"[28]

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[27] *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority as Refugees*, Christian Broadcasting Network (Jan. 27, 2017), https://goo.gl/2GLB5q.

[28] Amy B. Wang, *Trump asked for a 'Muslim ban,' Giuliani says—and ordered a commission to do it 'legally'*, The Washing-

71. EO-1 spurred confusion and chaos. Over 100 people were detained upon arrival at U.S. airports,[29] and in just a few days, over 60,000 visas were revoked.[30]

72. Within days of EO-1's issuance, hundreds of State Department officials signed a memorandum circulated through the State Department's "Dissent Channel" stating that the Executive Order "runs counter to core American values" including "nondiscrimination," and that "[d]espite the Executive Order's focus on them, a vanishingly small number of terror attacks on U.S. soil have been committed by foreign nationals" here on visas.[31]

73. Likewise, Senators John McCain (R-AZ) and Lindsey Graham (R-SC) stated: "This executive order sends a signal, intended or not, that America does not want Muslims coming into our country."[32]

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ton Post (Jan. 29, 2017), https://goo.gl/Xog80h. A copy of this article is attached as Exhibit 5.

[29] Michael D. Shear et al., *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. Times (Jan. 28, 2017), https://goo.gl/OrUJEr.

[30] Adam Kelsey et al., *60,000 Visas Revoked Since Immigration Executive Order Signed: State Department*, ABC News (Feb. 3, 2017, 6:32 PM EST), https://goo.gl/JwPDEa.

[31] Jeffrey Gettleman, *State Department Dissent Cable on Trump's Ban Draws 1,000 Signatures*, N.Y. Times (Jan. 31, 2017), https://goo.gl/svRdIw. A copy of the Dissent Channel memorandum is attached as Exhibit 6.

[32] Press Release, Senator John McCain, *Statement By Senators McCain & Graham On Executive Order On Immigration* (Jan. 29, 2017), https://goo.gl/EvHvmc. A copy of this press release is attached as Exhibit 7.

74. On February 3, 2017, the U.S. District Court for the Western District of Washington enjoined EO-1's enforcement nationwide.[33] The Ninth Circuit denied the Government's request to stay the district court's injunction.[34]

C. The Second Travel Ban ("EO-2")

75. The Government did not appeal the Ninth Circuit's decision. Instead, it announced that the President intended to issue a new order to replace EO-1.

76. On February 21, Senior Advisor to the President Stephen Miller made clear that the second travel ban would not meaningfully differ from EO-1. He said: "Fundamentally, you're still going to have the same basic policy outcome for the country, but you're going to be responsive to a lot of very technical issues that were brought up by the court and those will be addressed. But in terms of protecting the country, those basic policies are still going to be in effect."[35]

77. During a press conference in February, President Trump said with respect to the new ban: "I got elected on defense of our country. I keep my cam-

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[33] *Washington* v. *Trump*, 2017 WL 462040, at *2-3 (W.D. Wash. Feb. 3, 2017).

[34] *Washington* v. *Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam).

[35] *Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start* (Fox News television broadcast Feb. 21, 2017), *transcript available at* https://goo.gl/weHvHH.

paign promises, and our citizens will be very happy when they see the result."[36]

78. While EO-2 was being prepared, the President repeated his view that 8 U.S.C. § 1182(f) means that the President "can suspend, you can put restrictions, you can do whatever you want."[37] Mr. Miller similarly stated that the President's powers to impose entry restrictions "will not be questioned."[38]

79. On February 24, 2017, a draft Department of Homeland Security report concluded that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity."[39] The final version of the report, released approximately a week later, concluded "that most foreign-born, [U.S.]-based violent extremists likely radicalized several years after their entry to the United States, [thus] limiting the ability of screen-

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[36] *Full transcript: President Donald Trump's news conference*, CNN Politics (Feb. 17, 2017, 4:12 AM EST), https://goo.gl/sTLbbx.

[37] *Transcript of President Donald Trump's speech to the Major Cities Chiefs Police Organization*, The Hill (Feb. 8, 2017, 3:40 PM EST), https://goo.gl/BkvQM2.

[38] *Face the Nation transcript February 12, 2017: Schumer, Flake, Miller*, CBS News (Feb. 12, 2017, 2:35 PM EST), https://goo.gl/v7gk6Z.

[39] *See* U.S. Department of Homeland Security, *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, at 1, https://goo.gl/vyy5qy (last visited Oct. 9, 2017, 6:45 PM EST). A copy of this draft report is attached as Exhibit 8. *See generally* Vivian Salama & Alicia A. Caldwell, *AP Exclusive: DHS report disputes threat from banned nations*, Associated Press (Feb. 24, 2017), https://goo.gl/91to90.

ing and vetting officials to prevent their entry because of national security concerns."[40]

80. On March 6, 2017, President Trump issued an executive order entitled "Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States" ("EO-2"). EO-2 contained substantially the same travel restrictions as EO-1. Section 2(c) of EO-2 suspended the "entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen" for a period of "90 days from the effective date of this order." Section 6(a) suspended the "travel" of all refugees to the United States for a period of 120 days, and suspended all "decisions" by the Secretary of Homeland Security on applications for refugee status for 120 days. Section 6(b) lowered the annual cap on refugee admissions to 50,000 refugees for fiscal year 2017.

81. EO-2 also established a process for expanding its travel bans. It directed the Secretaries of Homeland Security and State as well as the Director of National Intelligence to "conduct a worldwide review to

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[40] *See* U.S. Department of Homeland Security, *Intelligence Assessment: Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist*, at 1 (Mar. 1, 2017), https://goo.gl/igQQsn. A copy of this report is attached as Exhibit 9. *See generally* Tammy Kupperman, *DHS assessment: Individuals radicalized once in US*, CNN Politics (Mar. 4, 2017, 3:02 PM EST), https://goo.gl/Q6OVTd (discussing report); Nikita Vladimirov, *New DHS report finds most US-based extremists radicalized years after entry*, The Hill (Mar. 2, 2017, 10:34 PM EST), https://goo.gl/St8cTc (same).

identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA * * * to determine that the individual is not a security or public safety threat." Those officials were instructed to submit to the President "a list of countries that do not provide adequate information" within 20 days of the effective date of the Order. The Secretary of State was instructed to "request that all foreign governments that do not supply [the necessary] information regarding their nationals begin providing it within 50 days of notification." Then, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, was to "submit to the President a list of countries recommended for inclusion" in the travel ban. Those officials were also authorized to "submit to the President," at "any point after the submission of the list" of countries recommended for inclusion, "the names of additional countries recommended for similar treatment."

82. In a briefing the day after EO-2 was signed, White House Press Secretary Sean Spicer told reporters that with EO-2, President Trump "continue[d] to deliver on * * * his most significant campaign promises."[41] At this time—and until minutes before oral argument in the Fourth Circuit in May 2017—President Trump's regularly updated campaign website continued to feature his campaign statement calling for a "total

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[41] The White House, Office of the Press Sec'y, *Press Briefing by Press Secretary Sean Spicer #18* (Mar. 7, 2017), https://goo.gl/dYyRzY.

and complete shutdown of Muslims entering the United States."[42]

83. In March 2017, this Court issued a temporary restraining order, and subsequently a preliminary injunction, enjoining Sections 2 and 6 of EO-2.[43] On June 12, 2017, the Ninth Circuit affirmed in large part this Court's preliminary injunction, but permitted the review prescribed in Section 2 to go into effect. The Supreme Court granted certiorari and partially stayed this Court's injunction as to aliens who lack a bona fide relationship to a U.S. person or entity.[44]

84. Shortly after this Court first enjoined EO-2, the President told a rally of his supporters that EO-2 was just a "watered down version of the first one" and had been "tailor[ed]" at the behest of "the lawyers."[45] He added: "I think we ought to go back to the first one and go all the way, which is what I wanted to do in the first place."[46] In addition, President Trump stated

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[42] Christine Wang, *Trump website takes down Muslim ban statement after reporter grills Spicer in briefing*, CNBC (May 8, 2017), https://goo.gl/j0kpAi.

[43] *Hawaii* v. *Trump*, 241 F. Supp. 3d 1119 (D. Haw. 2017); *Hawaii* v. *Trump*, 245 F. Supp. 3d 1227 (D. Haw. 2017).

[44] *Hawaii* v. *Trump*, 859 F.3d 741 (9th Cir. 2017).

[45] Katie Reilly, *Read President Trump's Response to the Travel Ban Ruling: It 'Makes Us Look Weak'*, Time (Mar. 16, 2017), https://goo.gl/UcPHfg.

[46] *See id.*

that it is "very hard" for Muslims to assimilate into Western culture.[47]

85. During a rally in April 2017, President Trump recited the lyrics to a song called "The Snake," as he had during the campaign, as a warning about allowing Syrian refugees into the United States.[48] During a gathering that same month, he reiterated his view that Muslim refugees had previously been favored over Christians, and that his Administration would help Christians.[49]

86. On June 5, 2017, the President endorsed the "original Travel Ban" in a series of tweets in which he complained about how the Justice Department had submitted a "watered down, politically correct version * * * to S.C."[50] He urged the Justice Department to seek "an expedited hearing of the watered down Travel Ban before the Supreme Court," and to "seek

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[47] Chris Cillizza, *Donald Trump's explanation of his wiretapping tweets will shock and amaze you*, The Washington Post (Mar. 16, 2017), https://goo.gl/yMLIlm.

[48] *Compare* Marc Fisher, *Trump invigorates, enchants crowd during rally in Harrisburg, Pa.*, The Washington Post (Apr. 29, 2017), https://goo.gl/3tUnNo (recounting that President Trump read "The Snake" during a recent speech), *with* Ali Vitali, *'The Snake': Trump Poetry Slams Syrian Refugees With Allegorical Song*, NBC News (Jan. 12, 2016), https://goo.gl/ZF1x1n (recounting that Donald Trump did "[a] dramatic reading" of "The Snake" during a campaign speech).

[49] Scott Johnson, *At the White House with Trump*, PowerlineBlog.com (Apr. 25, 2017), https://goo.gl/ZeXqhY.

[50] Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:29 AM EDT) https://goo.gl/dPiDBu.

[a] much tougher version!"[51] He further stated: "People, the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN!"[52] And he added: "That's right, we need a TRAVEL BAN for certain DANGEROUS countries, not some politically correct term that won't help us protect our people!"[53]

87. On September 15, 2017, the President issued a tweet stating: "The travel ban into the United States should be far larger, tougher and more specific-but stupidly, that would not be politically correct!"[54]

88. The White House Press Secretary has confirmed that President Trump's tweets represent "official statements."[55] The President has never renounced or repudiated his calls for a ban on Muslim immigration.

D. The Third Travel Ban ("EO-3")

89. On September 24, 2017, President Trump issued a Proclamation entitled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry

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[51] Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:37 AM EDT), https://goo.gl/E3AP7F.

[52] Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:25 AM EDT), https://goo.gl/9fsD9K.

[53] Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 6:20 PM EDT), https://goo.gl/VGaJ7z.

[54] Donald J. Trump (@realDonaldTrump), Twitter (Sept. 15, 2017, 6:54 AM EDT), https://goo.gl/CGtXnD.

[55] Elizabeth Landers, *White House: Trump's tweets are 'official statements'*, CNN Politics (June 6, 2017, 4:37 PM EDT), https://goo.gl/XYyso5.

into the United States by Terrorists or Other Public-Safety Threats" ("EO-3").

90. Section 2 of EO-3 indefinitely bans immigration into the United States by nationals of seven countries: Iran, Libya, Syria, Yemen, Somalia, Chad, and North Korea. It also imposes restrictions on the issuance of nonimmigrant visas to nationals of six of those countries: It bans the issuance of all nonimmigrant visas to nationals of North Korea and Syria; bans the issuance of all nonimmigrant visas except student (F and M) and exchange (J) visas to nationals of Iran; and bans the issuance of business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas to nationals of Chad, Libya, and Yemen. EO-3 suspends the issuance of business, tourist, and business-tourist visas to certain Venezuelan government officials.

91. EO-3 states that it is a direct outgrowth of the review process set forth in EO-1 and EO-2. It asserts that, as directed by those orders, the Secretary of Homeland Security developed criteria to assess whether countries have adequate protocols and practices for sharing identity-management information and national security and public-safety information, and whether they pose a national security and public-safety risk. The order states that, based on this review, the Department of Homeland Security identified 16 countries that were "inadequate" under these criteria and 31 countries that were "at risk" of becoming "inadequate." The Secretary of Homeland Security recommended that entry restrictions be imposed on six of those countries: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. Iraq was also deemed inade-

quate under these criteria but was not included in the travel ban. Somalia was not deemed inadequate but was nevertheless included.

92. Six of the seven countries whose nationals are subject to entry restrictions under EO-3—Chad, Iran, Libya, Syria, Somalia, and Yemen—have majority-Muslim populations. Approximately 55.3% of Chad's population is Muslim. Among the other five countries, the percentage of the population that is Muslim ranges from 92.8% to 99.8%.[56]

93. North Korea does not allow its nationals to emigrate outside of the country, particularly to the United States.[57] The United States issued 100 visas to North Koreans in 2016, and 42 of those were diplomatic visas, which are exempt from EO-3.[58] Three days before the issuance of EO-3, on September 21, 2017, the President imposed sanctions on North Korea that suspended en-

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[56] *See* Pew-Templeton Global Religious Futures Project, *Muslim Population by Country* (2010), http://www.globalreligiousfutures.org/countries. This is the same source that the Government relied upon during prior briefing in this Court about EO-1 and EO-2, and this Court cited this source in its Order granting Plaintiffs' motion for a temporary restraining order ("TRO") against enforcement of EO-2. *See, e.g.*, Dkt. No. 219, at 31 (Order Granting Mot. for TRO).

[57] Emily Rauhala, *Almost No North Koreans Travel to the U.S., So Why Ban Them?* The Washington Post (Sept. 25, 2017), https://goo.gl/2szjNc.

[58] Hyung-Jin Kim, *Trump's travel ban unlikely to affect North Korea*, The Washington Post (Sept. 25, 2017), https://goo.gl/81nD68.

try by "North Korean person[s]" as immigrants or non-immigrants.[59]

94. In remarks made on the day that EO-3 was released, the President stated: "The travel ban: The tougher, the better."[60]

95. On September 27, 2017, President Trump responded to a question on why North Korea was added and why Sudan was removed from the list of nations in EO-3 by stating that "we can add countries very easily and we can take countries away," adding: "I want the toughest travel ban you can have."[61]

II. EFFECTS OF EO-2 AND EO-3 ON PLAINTIFFS

A. Effects on Plaintiff State of Hawaii

96. Both EO-2 and EO-3 have had and will continue to have profound negative effects on the State of Hawaii, its University, its public and private employers, its refugee program, and its residents.

97. EO-2 and EO-3 will negatively affect the University's ability to recruit and hire new faculty members and scholars. It will be difficult, if not impossible, for the University to hire individuals from the countries subject to entry restrictions under EO-2 and

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[59] President Donald J. Trump, "Presidential Executive Order on Imposing Additional Sanctions with Respect to North Korea," §§ 1(a)(iv), 5 (Sept. 21, 2017), https://goo.gl/Dx3T6a.

[60] The White House, Office of the Press Sec'y, *Press Gaggle by President Trump, Morristown Municipal Airport, 9/24/2017* (Sept. 24, 2017), https://goo.gl/R8DnJq.

[61] The White House, Office of the Press Sec'y, *Press Gaggle by President Trump* (Sept. 27, 2017), https://goo.gl/5dusi4.

EO-3. Nationals of the countries subject to the orders may be unable to obtain entry to the United States. And even if they can obtain entry, faculty and scholars who are uncertain whether they can enter the country, or whose family members and associates would be subject to entry restrictions, will be unlikely to accept an offer of employment to work at the University.

98. EO-2 and EO-3 will negatively affect the University's ability to recruit and enroll new students. Nationals of the countries subject to the orders may be unable to obtain entry to the United States. And even if they can obtain entry, they will be uncertain whether their spouses, children, and other close family members will be able to join them in the United States or visit them here. Prospective students will therefore be deterred from applying to or enrolling in the University.

99. EO-2 and EO-3 will prevent the University of Hawaii from hosting speakers and visiting scholars from the designated countries. Specifically:

a. The University will be precluded from offering a scholarship to a Syrian national who participated in a Speaker Series event in September 2017 hosted by the International Cultural Studies Program at the University. The University would like to offer this person a scholarship, but because he has a B-1/B-2 visa that will soon become inoperative—requiring him to obtain an new visa to enter the United States—EO-3 will preclude him from accepting the University's offer.

b. The University's International Cultural Studies Program will be precluded from hosting a Syrian national who is an expert on the Syrian revolution to give a presentation at the University in either November 2017 or January 2018, as the University had planned to do.

c. The University's International Cultural Studies Program will be precluded from inviting a Chadian national, who is the director of a film that the Honolulu Museum of Art will be screening this year, to a presentation about human rights abuses in Chad in the spring of 2018, as the University had planned to do.

d. The University's Department of Art and Art History will be precluded from hosting a Syrian national living in Germany, who is an award- winning artist, as a visiting scholar in the Department's "Intersections program" this spring, as the University had planned to do.

e. The University's Department of Art and Art History will be precluded from hosting two award-winning Iranian artists to be visiting scholars, as the University had planned to do.

100. EO-2 and EO-3 will indefinitely separate many current faculty members, scholars, and students at the University from family members who are nationals of the designated countries. Many students and faculty members will consequently be unwilling to remain at the University or in the United States.

Plaintiff John Doe 2, for instance, has stated that he will be less likely to remain in the country long-term if EO-3 goes into effect. At least one other University professor whose relatives are subject to EO-3 has expressed plans to move to Canada if EO-3 is not enjoined.

101. EO-2 and EO-3 will deter University students and faculty from temporarily leaving the country for professional, academic, or personal travel. Some individuals on single-entry visas who are nationals of the banned countries fear that they will not be able to return to the United States if they leave while either order is in effect. As a result, individuals will not take overseas trips that are important for their educational and scholarly pursuits, or for family reasons (*e.g.*, to care for an ailing family member). The University may lose talented members of its community who do not wish to or are unable to remain at the University because of this constraint.

102. In addition, EO-2 and EO-3 will inflict financial, proprietary, and academic injuries on the University. The University will receive reduced tuition dollars due to the reduced enrollment of students. It will be unable to win as many competitive grants due to its increased difficulty attracting and retaining highly qualified faculty, scholars, and students. The quality of the University's academic work and the diversity of its academic community will also suffer from the loss of otherwise qualified individuals.

103. EO-2 and EO-3 are harming and will continue to harm Hawaii's economy. Nationals of the countries designated in each order will be unable to visit the

State as tourists. Because tourism is a principal driver of the State's economy, this reduction in tourism will harm the State's businesses and, in turn, reduce its tax revenue.

104. Data from the past year confirms that EO-2 and EO-3 will reduce tourism. Since EO-1 and EO-2 were issued, the number of visitors to Hawaii from the Middle East has fallen in every single month as compared to the same month in 2016, and the aggregate number of visitors from the Middle East has fallen by over 25%. The aggregate number of visitors from Africa during that same period has declined by 15%.

105. The reduction in tourism to Hawaii is consistent with the experiences of other States. During the six-month period from March 2017 through August 2017, the number of visas issued to visitors from the countries designated by EO-2 fell 44% compared to the same period in 2016. The issuance of nonimmigrant visas to nationals of all Arab countries fell 16% compared to the prior year, even as the number of visas issued to people from all countries was unchanged.[62]

106. EO-2 and EO-3 also chill tourism to Hawaii from countries that are not yet designated by the orders. Both EO-2 and EO-3 establish procedures by which the President can extend the travel bans to additional countries. Nationals of other countries, who fear they may be subject to a subsequent ban, are therefore deterred from traveling to Hawaii. In addi-

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[62] Nahal Toosi, et al., *Muslim nations targeted by Trump's travel ban see steep visa drop*, Politico (Sept. 29, 2017), https://goo.gl/Ta2cCe.

tion, both EO-2 and EO-3 give rise to a global perception that the United States is an exclusionary country, impair the State's reputation as a place of welcome, and reduce foreign nationals' interest in visiting.

107. EO-2 and EO-3 hinder the efforts of the State and its residents to resettle and assist refugees. The State's refugee program is an important part of its culture and official policies,[63] and refugees from numerous countries have resettled in Hawaii in recent years.[64] In late 2015, as other States objected to the admission of Syrian refugees, Governor Ige issued a statement that "slamming the door in their face would be a betrayal of our values." Governor Ige explained: "Hawaii and our nation have a long history of welcoming refugees impacted by war and oppression. Hawaii is the Aloha State, known for its tradition of welcoming all people with tolerance and mutual respect."[65] As long as EO-2 prohibits refugee admissions, the State and its residents are prevented from helping refugees resettle in Hawaii. The State will receive reduced federal grant funding as a result.

108. EO-2 and EO-3 prevent Hawaii from fulfilling the commitments to nondiscrimination and diversity embodied in the State's Constitution, laws, and policies.

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[63] *See supra* ¶¶ 24-26 & note 12.

[64] U.S. Department of Health & Human Servs., Office of Refugee Resettlement, *Overseas Refugee Arrival Data: Fiscal Years 2012-2015* (Nov. 24, 2015), https://goo.gl/JcgkDM.

[65] Press Release, Governor of the State of Hawaii, *Governor David Ige's Statement On Syrian Refugees* (Nov. 16, 2015), https://goo.gl/gJcMIv.

State agencies and universities cannot accept qualified applicants for open employment positions if they are nationals of the countries designated by these orders, contravening policies designed to promote diversity and recruit talent from abroad.[66] In addition, the orders require the State to tolerate a policy designed to disfavor the Islamic faith, in violation of the Establishment Clause of both the federal and state constitutions.

109. EO-2 and EO-3 are antithetical to the State's identity and spirit. For many in Hawaii, including state officials, the travel bans conjure up the memory of the Chinese Exclusion Acts and the imposition of martial law and Japanese internment after the bombing of Pearl Harbor. As Governor Ige observed two days after President Trump issued EO-1, "Hawaii has a proud history as a place immigrants of diverse backgrounds can achieve their dreams through hard work. Many of our people also know all too well the consequences of giving in to fear of newcomers. The remains of the internment camp at Honouliuli are a sad testament to that fear. We must remain true to our

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[66] *See, e.g.*, State of Hawaii, Department of Human Resources Development, Policy No. 601.001: Discrimination/Harassment-Free Workplace Policy (revised Nov. 16, 2016), https://goo.gl/7q6yzJ; University of Hawaii, Mānoa, Policy M1.100: Non-Discrimination and Affirmative Action Policy, https://goo.gl/6YqVl8 (last visited Oct. 9, 2017, 7:05 PM EDT); *see also, e.g.*, *Campus Life: Diversity*, University of Hawaii, Mānoa, https://goo.gl/3nF5C9 (last visited Oct. 9, 2017, 7:05 PM EDT).

values and be vigilant where we see the worst part of history about to be repeated."[67]

B. Effects on Plaintiff Dr. Elshikh

110. EO-2 and EO-3 have injured Dr. Elshikh by preventing him from reuniting with his relatives and denigrating him as a Muslim and an Imam.

111. EO-1 and EO-2 separated Dr. Elshikh from his mother-in-law. Dr. Elshikh's mother-in-law is a Syrian national who until recently lived in Syria. In 2015, Dr. Elshikh's wife petitioned for an immigrant visa on her mother's behalf so that she could move to the United States and live with their family in Hawaii. On January 31, 2017, after EO-1 was issued, Dr. Elshikh's mother-in-law's visa application was put on hold. In March 2017, after EO-1 was enjoined, the application was processed and Dr. Elshikh's mother-in-law was scheduled for an interview. She received an immigrant visa in July 2017, immigrated to the United States in August 2017, and now lives in Hawaii with Dr. Elshikh and his family. Had EO-2 gone into effect, it would have barred Dr. Elshikh from seeing and living with his mother-in-law.

112. EO-3 will separate Dr. Elshikh from his brothers-in-law. Dr. Elshikh has four brothers-in-law who are Syrian nationals living in Syria. On October 5, 2017, one of Dr. Elshikh's brothers-in-law filed an application for a tourist visa so that he can travel to

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[67] Press Release, Governor of the State of Hawaii, *Statement of Governor David Ige On Immigration To The United States* (Jan. 29, 2017), https://goo.gl/62w1fh.

Hawaii and visit Dr. Elshikh's family. Dr. Elshikh will hold a combined birthday celebration for his three sons in March 2018, to which he is inviting all four of his brothers-in-law. EO-3 will prevent Dr. Elshikh's brothers-in-law from entering the United States or visiting him and his family.

113. EO-2 and EO-3 denigrate Dr. Elshikh and his family as Muslims. The orders convey to him and his children, all twelve years of age or younger, that they are not equal citizens of the country and that their government discriminates against persons who share their religion and ethnicity. The order conveys to them that they are members of a disfavored religion in Hawaii and the United States.

114. EO-2 and EO-3 harm Dr. Elshikh in his capacity as Imam of Hawaii's largest mosque. The orders denigrate and demean members of his mosque because of their religious views and national origin. The orders prevent members of the mosque from seeing members of their family, many of whom are nationals of countries designated by the orders, and prevent the mosque from welcoming visitors and refugees. As a result of the orders, members of the mosque are unable to associate as freely with those of other faiths.

C. Effects on Plaintiff John Doe 1

115. EO-2 and EO-3 prevent John Doe 1 from reuniting with his son-in-law and denigrate him as a Muslim.

116. John Doe 1's daughter filed an immigrant visa petition for her husband, a Yemeni national, in September 2015. After the petition was approved in late June 2017, the family submitted a visa application on

the son-in-law's behalf. That application is currently pending. EO-3 will prevent Doe 1's son-in-law from obtaining a visa to immigrate to the United States.

117. EO-2 and EO-3 discriminate against and denigrate Doe 1 and his family because they are Muslims and because Doe 1's daughter is married to another Muslim individual from a Muslim-majority country.

D. Effects on Plaintiff John Doe 2

118. EO-2 and EO-3 prevent John Doe 2 from reuniting with his mother and other close relatives and discriminates against Doe 2 because of his nationality.

119. John Doe 2's mother, an Iranian national living in Iran, filed an application for a tourist visa several months ago so that she could visit Doe 2 in Hawaii. That application is still pending. EO-3 will prevent Doe 2's mother from obtaining a visa and visiting Doe 2 in the United States.

120. Some of Doe 2's close relatives, who are also Iranian nationals living in Iran, have filed applications for tourist visas so that they can visit Doe 2 in Hawaii. They have been interviewed and their applications are currently pending. EO-3 will prevent these relatives from obtaining visas and visiting Doe 2 in the United States.

121. Doe 2 is less likely to remain in the United States on a long-term basis because EO-3, if not enjoined, will continue to deprive him of the company of his family. EO-3, like EO-1 and EO-2, makes Doe 2 feel like an outcast in his own country because of his Iranian nationality.

E. Effects on Plaintiff Muslim Association of Hawaii

122. EO-2 and EO-3 reduce the membership of the Muslim Association of Hawaii, diminish its financial receipts, interfere with its religious exercise, and denigrate the faith of the Association and its members.

123. EO-2 and EO-3 will diminish the membership of the Association and inflict financial harm. Over the last decade, many new members of the Association have been refugees and nationals of countries designated by EO-2 and EO-3. EO-2 and EO-3 will prevent such individuals from entering the United States and becoming members of the Association. As a result, contributions to the Association will decrease and the Association's finances will be harmed.

124. EO-2 and EO-3 will also diminish the existing membership of the Association. Many current members of the Association are foreign-born individuals who are nationals of countries designated by EO-2 and EO-3, and have close family members and friends who remain in those countries. The orders will prevent these individuals from seeing their friends and family. As a result, some of these individuals are likely to leave Hawaii and cease being members of the Association. The Association will be deprived of their membership and suffer decreased contributions as a result.

125. EO-2 and EO-3 prevent nationals of the countries designated in EO-2 and EO-3 from visiting the mosque and its members. The orders also deter nationals of other Muslim-majority countries from visiting the Association because they are concerned that

they will be subject to a future travel ban or made unwelcome in the United States. The Chairman of the Association is aware of four families from Morocco who have canceled plans to come to Hawaii because of the travel bans.

126. EO-2 and EO-3 interfere with the religious exercise of the Association and its members. Part of the religious practice of the Association and its members is to welcome adherents of the Muslim faith from other countries in order to connect with their fellow Muslims. The orders prevent Muslims living abroad from coming to Hawaii to visit the Association's mosque and to meet and worship with its members. The orders thereby inhibit the free exercise of the Association and its members.

127. EO-2 and EO-3 denigrate and demean the Association and its members as Muslims. Members of the Association are made to feel that they are less than other Americans because of their religion. The orders have caused children of the Association's members to be ashamed of their own faith. Since the travel bans were promulgated, several children in the Association's community have expressed the desire to their parents to change their Muslim names, and to not wear head coverings, to avoid being victims of violence.

CAUSES OF ACTION

COUNT I

(8 U.S.C. § 1152(a)(1)(A))

128. The foregoing allegations are realleged and incorporated by reference herein.

129. 8 U.S.C. § 1152(a)(1)(A) provides that "[e]xcept as specifically provided" in certain subsections, "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence."

130. Section 2(c) of EO-2 discriminates on the basis of nationality in the issuance of immigrant and nonimmigrant visas.

131. Sections 2(a)-(c), (e), (g), and (h) of EO-3 discriminate on the basis of nationality in the issuance of immigrant and nonimmigrant visas.

132. Through their actions described in this Complaint, Defendants have violated 8 U.S.C. § 1152(a)(1)(A). Defendants' violations inflict ongoing harm upon the State of Hawaii, Dr. Elshikh, John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

COUNT II

(8 U.S.C. §§ 1182(f) and 1185(a))

133. The foregoing allegations are realleged and incorporated by reference herein.

134. 8 U.S.C. § 1182(f) provides that "[w]henever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may

deem to be appropriate." 8 U.S.C. § 1185(a)(1) provides that "[u]nless otherwise ordered by the President, it shall be unlawful for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe."

135. Sections 2(c), 6(a), and 6(b) of EO-2 exceed the scope of the President's authority under Sections 1182(f) and 1185(a) by, *inter alia*, excluding aliens whose entry would not be "detrimental to the interests of the United States" within the meaning of those terms as informed by their text, history, and context, and by failing to adequately "find[]" that the entry of such aliens would be harmful to the United States.

136. Sections 2(a)-(c), (e), (g), and (h) of EO-3 exceed the scope of the President's authority under Sections 1182(f) and 1185(a) by, *inter alia*, excluding aliens whose entry would not be "detrimental to the interests of the United States" within the meaning of those terms as informed by their text, history, and context, and by failing to adequately "find[]" that the entry of such aliens would be harmful to the United States.

137. Through their actions described in this Complaint, Defendants have violated 8 U.S.C. §§ 1182(f) and 1185(a). Defendants' violations inflict ongoing harm upon the State of Hawaii, Dr. Elshikh, John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

COUNT III

(8 U.S.C. § 1157(a))

138. The foregoing allegations are realleged and incorporated by reference herein.

139. 8 U.S.C. § 1157(a)(2) provides that "[e]xcept as provided in subsection (b), the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest."

140. Section 6(b) of EO-2 altered the number of refugees who could be admitted for fiscal year 2017 after the beginning of the fiscal year and without engaging in appropriate consultation.

141. Through their actions described in this Complaint, Defendants have violated 8 U.S.C. § 1157(a). Defendants' violation inflicts ongoing harm upon the State of Hawaii, Dr. Elshikh, John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

COUNT IV

(First Amendment—Establishment Clause)

142. The foregoing allegations are realleged and incorporated by reference herein.

143. The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion." This restric-

tion prohibits the Federal Government from officially preferring one religion over another.

144. Sections 2(c), 6(a), and 6(b) of EO-2 denigrate and disadvantage members of the Islamic faith and effect an unconstitutional establishment of religion.

145. Sections 2(a)-(c), (e), (g), and (h) of EO-3 denigrate and disadvantage members of the Islamic faith and effect an unconstitutional establishment of religion.

146. Through their actions described in this Complaint, Defendants have violated the Establishment Clause. Defendants' violations inflict ongoing harm upon the State of Hawaii, Dr. Elshikh, John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

COUNT V

(First Amendment—Free Exercise)

147. The foregoing allegations are realleged and incorporated by reference herein.

148. The Free Exercise Clause of the First Amendment provides that "Congress shall make no law * * * prohibiting the free exercise [of religion]." This Clause prohibits Congress from enacting laws with the purpose or effect of suppressing religious belief or practice.

149. Sections 2(c), 6(a), and 6(b) of EO-2 target members of the Islamic faith for special burdens and subject them to denigration and disadvantages that have the purpose and effect of suppressing their practice of religion.

150. Sections 2(a)-(c), (e), (g), and (h) of EO-3 target members of the Islamic faith for special burdens and subject them to denigration and disadvantages that have the purpose and effect of suppressing their practice of religion.

151. Through their actions described in this Complaint, Defendants have violated the Free Exercise Clause. Defendants' violations inflict ongoing harm upon the State of Hawaii, Dr. Elshikh, John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

COUNT VI

(Fifth Amendment—Equal Protection)

152. The foregoing allegations are realleged and incorporated by reference herein.

153. The Due Process Clause of the Fifth Amendment prohibits the Federal Government from denying equal protection of the laws, including on the basis of religion and/or national origin, nationality, or alienage.

154. Sections 2(c), 6(a), and 6(b) of EO-2 discriminate on the basis of religion and/or national origin, nationality, or alienage and were motivated by animus and a desire to effect such discrimination.

155. Sections 2(a)-(c), (e), (g), and (h) of EO-3 discriminate on the basis of religion and/or national origin, nationality, or alienage and were motivated by animus and a desire to effect such discrimination.

156. EO-2 and EO-3 differentiate between persons based on their religion and/or national origin, national-

ity, or alienage and are accordingly subject to strict scrutiny. The orders fail that test because they over- and under-inclusive in restricting immigration for security reasons. The statements of President Trump and his advisors also provide direct evidence of the orders' discriminatory motives.

157. The orders are not rationally related to a legitimate government interest.

158. Through their actions described in this Complaint, Defendants have violated the equal protection guarantee of the Due Process Clause. Defendants' violations inflicts ongoing harm upon the State of Hawaii, Dr. Elshikh, John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

COUNT VII

(Religious Freedom Restoration Act)

159. The foregoing allegations are realleged and incorporated by reference herein.

160. The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1(a), prohibits the Federal Government from substantially burdening the exercise of religion, even if the burden results from a rule of general applicability.

161. Sections 2(c), 6(a), and 6(b) of EO-2 and Defendants' actions to implement them impose a substantial burden on the exercise of religion.

162. Sections 2(a)-(c), (e), (g), and (h) of EO-3 and Defendants' actions to implement it impose a substantial burden on the exercise of religion.

163. Among other injuries, some non-citizens currently outside the United States cannot enter the United States to reunite with their families or religious communities. Religious communities in the United States cannot welcome visitors, including religious workers, from designated countries. And some non-citizens currently in the United States may be prevented from travelling abroad on religious trips, including pilgrimages or trips to attend religious ceremonies overseas, if they do not have the requisite travel documents or multiple-entry visas.

164. Through their actions described in this Complaint, Defendants have violated the RFRA. Defendants' violations inflict ongoing harm upon the State of Hawaii, Dr. Elshikh, John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

COUNT VIII

(Substantive Violation of the Administrative Procedure Act through Violations of the Constitution, Immigration and Nationality Act, and Religious Freedom Restoration Act, and Arbitrary and Capricious Action)

165. The foregoing allegations are realleged and incorporated by reference herein.

166. The APA requires courts to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in ac-

cordance with law"; "contrary to constitutional right, power, privilege, or immunity"; or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

167. In enacting and implementing Sections 2(c), 6(a), and 6(b) of EO-2, and Sections 2(a)-(c), (e), (g), and (h) of EO-3, Defendants have acted contrary to the Establishment Clause and Fifth Amendment of the United States Constitution, the INA, and RFRA. Defendants have exceeded their constitutional and statutory authority, engaged in nationality- and religion-based discrimination, and failed to vindicate statutory rights guaranteed by the INA.

168. Further, in enacting and implementing Sections 2(c), 6(a), and 6(b) of EO-2, and Sections 2(a)-(c), (e), (g), and (h) of EO-3, Defendants have acted arbitrarily and capriciously. Among other arbitrary actions and omissions, Defendants have not offered a satisfactory explanation for the countries that are and are not included within the scope of the orders.

169. Through their actions described in this Complaint, Defendants have violated the substantive requirements of the APA. Defendants' violations inflict ongoing harm upon the State of Hawaii, Dr. Elshikh, John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

COUNT IX

(Procedural Violation of the Administrative Procedure Act)

170. The foregoing allegations are realleged and incorporated by reference herein.

171. The APA requires courts to hold unlawful and set aside any agency action taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

172. The Departments of State and Homeland Security are "agencies" under the APA. *See* 5 U.S.C. § 551(1).

173. The APA requires that agencies follow rulemaking procedures before engaging in action that impacts substantive rights. *See* 5 U.S.C. § 553.

174. In enacting and implementing Sections 2(c), 6(a), and 6(b) of EO-2, and Sections 2(a)-(c), (e), (g), and (h) of EO-3, Defendants have changed the substantive criteria by which individuals from the designated countries may enter the United States. This, among other actions by Defendants, impacts substantive rights.

175. Defendants did not follow the rulemaking procedures required by the APA in enacting and implementing the orders.

176. Through their actions described in this Complaint, Defendants have violated the procedural requirements of the APA. Defendants' violations inflict ongoing harm upon the State of Hawaii, Dr. Elshikh,

John Does 1 and 2, the Muslim Association of Hawaii and its members, and other Hawaii residents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

a. Declare that Sections 2(c), 6(a), and 6(b) of EO-2 are unauthorized by, and contrary to, the Constitution and laws of the United States;

b. Declare that Sections 2(a)-(c), (e), (g), and (h) of EO-3 are unauthorized by, and contrary to, the Constitution and laws of the United States;

c. Enjoin Defendants from implementing or enforcing Sections 2(c), 6(a), and 6(b) of EO-2 across the nation;

d. Enjoin Defendants from implementing or enforcing Section 2(a)-(c), (e), (g), and (h) of EO-3 across the nation;

e. Pursuant to Federal Rule of Civil Procedure 65(b)(2), set an expedited hearing within fourteen (14) days to determine whether the Temporary Restraining Order should be extended; and

f. Award damages, attorney's fees, and such additional relief as the interests of justice may require.

DATED: Washington, DC, Oct. 15, 2017.

- Dec. 7, 2015 -

DONALD J. TRUMP STATEMENT ON PREVENTING MUSLIM IMMIGRATION

(New York, NY) December 7th, 2015,—Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on. According to Pew Research, among others, there is great hatred towards Americans by large segments of the Muslim population. Most recently, a poll from the Center for Security Policy released data showing "25% of those polled agreed that violence against Americans here in the United States is justified as a part of the global jihad" and 51% of those polled, "agreed that Muslims in America should have the choice of being governed according to Shariah." Shariah authorizes such atrocities as murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women.

Mr. Trumps stated, "Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again."—*Donald J. Trump*

[EXHIBIT 2]

The Washington Post

Post Politics

'I think Islam hates us': A timeline of Trump's comments about Islam and Muslims

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By Jenna Johnson and Abigail Hauslohner May 20

President Trump is in Saudi Arabia this weekend to meet with Arab leaders, visit the birthplace of Islam and give a speech about religious tolerance with the hope of resetting his reputation with the world's 1.6 billion Muslims. But it's unclear if a two-day visit is enough to overshadow his past statements about Islam and its faithful, with his rhetoric becoming more virulent as he campaigned for president.

Here's a look back at some of the comments that he has made:

March 30, 2011: For years, Trump publicly questioned then-President Barack Obama's religious beliefs and place of birth. As he debated running for president in the 2012 election, Trump said in a radio interview: "He doesn't have a birth certificate, or if he does, there's something on that certificate that is very bad for him. Now, somebody told me—and I have no idea if this is bad for him or not, but perhaps it would be—that where it says 'religion,' it might have 'Muslim.' And if you're a Muslim, you don't change your religion, by the way." (Obama is a Christian, and state records show he was born in Hawaii.)

[EXHIBIT 3]

Sept. 17, 2015: At a campaign town hall in New Hampshire, a man in the audience shouted out: "We have a problem in this country; it's called Muslims. We know our current president is one." The man mentioned Muslim "training camps" and asked: "When can we get rid of them?" Trump responded: "We're going to be looking at a lot of different things. You know, a lot of people are saying that, and a lot of people are saying that bad things are happening out there. We're going to be looking at that and plenty of other things."

Sept. 20, 2015: On NBC News, Trump was asked if he would be comfortable with a Muslim as president; he responded: "I can say that, you know, it's something that at some point could happen. We will see. I mean, you know, it's something that could happen. Would I be comfortable? I don't know if we have to address it right now, but I think it is certainly something that could happen."

Sept. 30, 2015: At a New Hampshire rally, Trump pledged to kick all Syrian refugees—most of whom are Muslim—out of the country, as they might be a secret army. "They could be ISIS, I don't know. This could be one of the great tactical ploys of all time. A 200,000-man army, maybe," he said. In an interview that aired later, Trump said: "This could make the Trojan horse look like peanuts."

Oct. 21, 2015: On Fox Business, Trump says he would "certainly look at" the idea of closing mosques in the United States.

Nov. 16, 2015: Following a series of terrorist attacks in Paris, Trump said on MSNBC that he would "strongly consider" closing mosques. "I would hate to do it, but it's something that you're going to have to strongly consider because some of the ideas and some of the hatred—the absolute hatred—is coming from these areas," he said.

Nov. 20, 2015: In comments to Yahoo and NBC News, Trump seemed open to the idea of creating a database of all Muslims in the United States. Later, he and his aides would not rule out the idea.

Nov. 21, 2015: At a rally in Alabama, Trump said that on Sept. 11 he "watched when the World Trade Center came tumbling down. And I watched in Jersey City, N.J., where thousands and thousands of people were cheering as that building was coming down."

Nov. 22, 2015: On ABC News, Trump doubled down on his comment and added: "It was well covered at the time. There were people over in New Jersey that were watching it, a heavy Arab population, that were cheering as the buildings came down. Not good." (While there were some reports of celebrations overseas, extensive examination of news clips turn up no such celebrations in New Jersey.)

Nov. 30, 2015: On MSNBC, a reporter asked Trump if he thinks Islam is an inherently peaceful religion that's been perverted by a small percentage of followers or if it is an inherently violent religion. Trump responded: "Well, all I can say . . . there's something going on. You know, there's something definitely going on. I don't

know that that question can be answered." He also said: "We are not loved by many Muslims."

Dec. 3, 2015: The morning after Syed Rizwan Farook and Tashfeen Malik killed 14 people in San Bernardino, Calif., Trump called into Fox News and said: "The other thing with the terrorists is you have to take out their families, when you get these terrorists, you have to take out their families." (Killing the relatives of suspected terrorists is forbidden by international law.) Later, in a speech to the Republican Jewish Coalition, Trump criticized Obama for not using the phrase "radical Islamic terrorism" and commented: "There's something going on with him that we don't know about."

Dec. 6, 2015: On CBS News, Trump said: "If you have people coming out of mosques with hatred and death in their eyes and on their minds, we're going to have to do something." Trump also said he didn't believe the sister of one of the San Bernardino shooters who said she was crestfallen for the victims, saying: "I would go after a lot of people, and I would find out whether or not they knew. I would be able to find out, because I don't believe the sister."

Dec. 7, 2015: Trump's campaign issued a statement saying: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on." Trump read this statement aloud at a rally in South Carolina.

Dec. 8, 2015: On CNN, Trump quoted a widely debunked poll by an anti-Islam activist organization that

claimed that a quarter of the Muslims living in the United States agreed that violence against Americans is justified as part of the global jihad. "We have people out there that want to do great destruction to our country, whether it's 25 percent or 10 percent or 5 percent, it's too much," Trump said.

Dec. 13, 2015: On Fox News, Trump was asked if his ban would apply to a Canadian businessman who is a Muslim. Trump responded: "There's a sickness. They're sick people. There's a sickness going on. There's a group of people that is very sick."

Jan. 12, 2016: At a rally in Iowa, Trump shared his suspicions about Syrian refugees and then read the lyrics to Al Wilson's 1968 song "The Snake," the story of a "tender woman" who nursed a sickly snake back to health but then was attacked by the snake. Trump often read these lyrics at rallies.

Feb. 3, 2016: Trump criticized Obama for visiting a mosque in Baltimore and said on Fox News: "Maybe he feels comfortable there . . . There are a lot of places he can go, and he chose a mosque." (It was Obama's first visit to a mosque during his presidency, and it was made in an effort to encourage religious tolerance in light of growing anti-Muslim sentiment.)

Feb. 20, 2016: After Obama skipped the funeral of Supreme Court Justice Antonin Scalia, Trump tweeted: "I wonder if President Obama would have attended the funeral of Justice Scalia if it were held in a Mosque? Very sad that he did not go!" (Obama did pay his respects when Scalia's body lay in repose in the Supreme Court.) That night at a rally in South Carolina,

Trump told an apocryphal tale that he would return to repeatedly about U.S. Gen. John J. Pershing fighting Muslim insurgents in the Philippines in the early 1900s and killing a large group of insurgents with bullets dipped in pigs' blood.

March 9, 2016: On CNN, Trump said: "I think Islam hates us. There's something there that—there's a tremendous hatred there. There's a tremendous hatred. We have to get to the bottom of it. There's an unbelievable hatred of us."

March 22, 2016: Soon after three suicide bombings in Brussels tied to a group of French and Belgian Muslims, Trump told Fox Business: "We're having problems with the Muslims, and we're having problems with Muslims coming into the country." Trump called for surveillance of mosques in the United States, saying: "You have to deal with the mosques, whether we like it or not, I mean, you know, these attacks aren't coming out of—they're not done by Swedish people."

On NBC News, Trump added: "This all happened because, frankly, there's no assimilation. They are not assimilating . . . They want to go by sharia law. They want sharia law. They don't want the laws that we have. They want sharia law."

March 23, 2016: In an interview with Bloomberg TV, Trump said that Muslims "have to respect us. They do not respect us at all. And frankly, they don't respect a lot of the things that are happening throughout not only our country, but they don't respect other things."

March 29, 2016: During a town hall in Wisconsin, CNN's Anderson Cooper asked Trump: "Do you trust Muslims in America?" Trump responded: "Do I what?" Cooper again asked: "Trust Muslims in America?" Trump responded: "Many of them I do. Many of them I do, and some, I guess, we don't. Some, I guess, we don't. We have a problem, and we can try and be very politically correct and pretend we don't have a problem, but, Anderson, we have a major, major problem. This is, in a sense, this is a war."

May 20, 2016: On Fox News, Trump said this of Muslims: "They're going to have to turn in the people that are bombing the planes. And they know who the people are. And we're not going to find the people by just continuing to be so nice and so soft."

June 13, 2016: The day after the mass shooting at a gay nightclub in Orlando, Trump declared in a speech in New Hampshire that "radical Islam is anti-woman, anti-gay and anti-American." He criticized his Democratic rival, Hillary Clinton, for refusing to use the term "radical Islam" and for speaking positively of Islam. "Hillary Clinton's catastrophic immigration plan will bring vastly more radical Islamic immigration into this country, threatening not only our society but our entire way of life. When it comes to radical Islamic terrorism, ignorance is not bliss. It's deadly—totally deadly," Trump said. Later he added: "I want every American to succeed, including Muslims—but the Muslims have to work with us. They have to work with us. They know what's going on."

June 14, 2016: At a rally in North Carolina, Trump noted that the Orlando shooter's parents are Muslim

Americans who immigrated from Afghanistan. "The children of Muslim American parents, they're responsible for a growing number for whatever reason a growing number of terrorist attacks," he said, adding that immigration from Afghanistan has increased fivefold. " . . . Every year we bring in more than 100,000 lifetime immigrants from the Middle East and many more from Muslim countries outside of the Middle East. A number of these immigrants have hostile attitudes."

June 15, 2016: On Fox News, Trump said this of Muslims who immigrate to the United States: "Assimilation has been very hard. It's almost—I won't say nonexistent, but it gets to be pretty close. And I'm talking about second and third generation. They come—they don't—for some reason, there's no real assimilation."

July 21, 2016: In accepting the Republican Party's presidential nomination, Trump focused heavily on "brutal Islamic terrorism" and promised: "I will do everything in my power to protect our LGBTQ citizens from the violence and oppression of a hateful foreign ideology."

July 24, 2016: On NBC News, Trump defended his proposal for a Muslim ban, despite some of his aides insisting he had rolled it back. "People were so upset when I used the word Muslim. 'Oh, you can't use the word Muslim,'" Trump said. " . . . But just remember this: Our Constitution is great, but it doesn't necessarily give us the right to commit suicide, okay? Now, we have a religious—you know, everybody wants to be protected. And that's great. And that's the

wonderful part of our Constitution. I view it differently. Why are we committing suicide? Why are we doing that?"

Aug. 11, 2016: At a meeting of evangelical leaders in Orlando, Trump said: "If you were a Christian in Syria, it was virtually impossible to come into the United States. If you were a Muslim from Syria, it was one of the easier countries to be able to find your way into the United States. Think of that. Just think of what that means."

Aug. 18, 2016: During a rally in North Carolina, Trump said that "all applicants for immigration will be vetted for ties to radical ideology, and we will screen out anyone who doesn't share our values and love our people."

Sept. 19, 2016: At a rally in Florida, Trump reacted to explosions over the weekend in New York and New Jersey and said: "There have been Islamic terrorist attacks in Minnesota and New York City and in New Jersey. These attacks and many others were made possible because of our extremely open immigration system, which fails to properly vet and screen the individuals and families coming into our country. Got to be careful."

Jan. 27, 2017: Within a week of becoming president, Trump signed an executive order blocking Syrian refugees and banning citizens of seven predominantly Muslim countries from entering the United States for 90 days. This order goes into effect immediately, prompting mass chaos at airports, protests and legal challenges. Rudolph W. Giuliani, a close adviser to the

president, later said on Fox News: "So when [Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"

Feb. 28, 2017: Despite urging from some of his Cabinet members, Trump continues to use the term "radical Islamic terrorism," including in a speech to a joint session of Congress.

March 6, 2017: Trump issues a new travel ban for citizens from six majority-Muslim countries, which is also challenged in the courts.

April 29, 2017: At a rally celebrating his 100th day in office, Trump once again dramatically read "The Snake."

May 17, 2017: At a commencement ceremony, Trump previewed his upcoming overseas trip and said: "I'll speak with Muslim leaders and challenge them to fight hatred and extremism and embrace a peaceful future for their faith. And they're looking very much forward to hearing what we, as your representative, we have to say. We have to stop radical Islamic terrorism."

MEET THE PRESS JUL 24 2016, 11:47 AM ET

Meet the Press—July 24, 2016

Meet the Press—July 24, 2016

CHUCK TODD:

This Sunday, the Democratic National Convention gets underway here in Philadelphia, after a raucous and unpredictable Republican convention. That ended with the nomination of Donald Trump.

DONALD TRUMP:

I am with you, I will fight for you, and I will win for you.

CHUCK TODD:

This morning, my sit-down with Donald Trump on his convention speech.

DONALD TRUMP:

The only negative reviews were a little dark.

CHUCK TODD:

On whether he's backing off on his Muslim band.

DONALD TRUMP:

I actually don't think it's a pull-back. In fact, you could say it's an expansion.

CHUCK TODD:

And on Hillary Clinton's choice of Tim Kaine.

[EXHIBIT 4]

DONALD TRUMP:

Tim Kaine was a slap in the face to Bernie Sanders.

CHUCK TODD:

Plus Hillary Clinton and Tim Kaine hit the road in Florida.

HILLARY CLINTON:

Tim Kaine is everything Donald Trump and Mike Pence are not.

CHUCK TODD:

But some Bernie Sanders supporters are criticizing the Kaine pick as a sellout to moderates. I'll talk to Sanders and get his reaction to that and to the DNC Wikileaks e-mail release. Joining me for insight and analysis are MSNBC's Rachel Maddow, former chairman of the RNC, Michael Steele, NBC News Chief Foreign Affairs Correspondent, Andrea Mitchell, and host of Hardball and Philadelphia hometown boy, Chris Matthews. Trump, Sanders and reactions to the new Democratic ticket. Welcome to Sunday, in a special edition of Meet the Press at the Democratic National Convention.

CHUCK TODD:

Good Sunday morning. We are at the Wells Fargo Center here in South Philadelphia, home of the NBA 76ers and the NHL Broad Street Bullies, the Fliers. Democrats have begun to arrive, along with a pretty bad heat wave. And beginning tomorrow, they will gather to officially nominate Hillary Clinton as their presidential candidate.

Yesterday in Miami, Clinton was joined by her new running mate, Senator Tim Kaine of Virginia, in an upbeat event that was notable simply by the contrast to the disorganized rollout of Donald Trump's running mate a week earlier, Mike Pence.

(BEGIN TAPE)

SEN. TIM KAINE:

Hillary Clinton, she doesn't insult people, she listens to them. What a novel concept, right? She doesn't trash our allies, she respects them. And she'll always have our backs, that is something I am rock solid sure of.

(END TAPE)

CHUCK TODD:

We will get to reaction to the new Democratic ticket later in the show, including my interview with Senator Bernie Sanders of Vermont in a moment. But first, we're going to talk also about Sanders, about those Wikileaks emails and what they may say about DNC favoritism towards Hillary Clinton. But we begin with the man who has now taken control of the Republican Party. It's nominee Donald Trump.

I traveled to Trump National Golf Club in Bedminster, New Jersey, sort of his weekend getaway, last night for a face-to-face interview since dropping the word "presumptive," it's his first one, from the nominee title. We touched on so much: Tim Kaine, Trump's tax returns, his proposed restrictions on Muslim immigration and why he says he alone can fix the country's problems. But I began by asking him how it feels to

be the Republican nominee for president of the United States.

(BEGIN TAPE)

DONALD TRUMP:

Well, it really feels great. And we really have a very unified party, other than a very small group of people that, frankly, lost. And we have a very unified party. You saw that the other night with the love in the room, and the enthusiasm in the room. The enthusiasm, there are people that say they have never seen anything like what was going on in that room, especially Thursday night.

CHUCK TODD:

Let me tell you, you bring up Thursday night, I've got to ask you about your entrance. Before we get serious here. That Monday night entrance was something else. I know you've gotten a lot of feedback on it. How'd you come up with it?

DONALD TRUMP:

I think I'm a little bit lucky, and a couple of people had that idea and I went along with the idea. And everything just worked right. And it was so good that they wanted to do it on Thursday night. I said, "Never in a million years, because you'll never get it that way again."

CHUCK TODD:

I don't think I've seen that even on WWE.

DONALD TRUMP:

Yeah, I know. Well, Vince is a good friend of mine. He called me, he said, "That was a very, very good entrance." But I didn't want to do it a second time, because, you know, it never works out the second time.

CHUCK TODD:

All right, let's go into the speech. I want to put some meat on the bones. But first, let's talk about, you've seen some of the positive reviews, some of the negative reviews. Some of the negative has been that it was a little dark—

DONALD TRUMP:

That's the only thing that—

CHUCK TODD:

—that there wasn't enough optimism in it. What would you say? It's not Morning in America.

DONALD TRUMP:

Yeah.

CHUCK TODD:

What would you say to that?

DONALD TRUMP:

Well, I think the only negativity, and, you know, the hate, I call them the haters, and that's fine. But the only negative reviews were, "A little dark." And the following day, they had another attack, and then today you see what happened in Afghanistan with many, many people killed.

They have no idea how many, so many killed. Yesterday it was Munich. And you know, I know they're saying, "Maybe it wasn't terrorism. Maybe it was just a crazy guy." But in the meantime he's screaming, "Allahu Akbar," as he's shooting people, so, you know, we'll see how that turns out. And all of a sudden people are saying, "Maybe it wasn't dark at all." But the only thing that some people said, "It was a little dark. It was a little bit tough."

CHUCK TODD:

Do you think it was a little dark?

DONALD TRUMP:

No, oh, I thought it was very optimistic. To me, it was an optimistic speech, because—

CHUCK TODD:

What makes it optimistic in your view?

DONALD TRUMP:

Because we're going to stop the problems. We're going to stop the problems. In other words, sure, I talk about the problems, but we're going to solve the problems.

CHUCK TODD:

One of the phrases you used, "I alone can fix it." And to some people, that sounded almost too strong-mannish for them. Do you understand that criticism and what do you make of it?

DONALD TRUMP:

I'll tell you, part of it was I'm comparing myself to Hillary. And we know Hillary, and we look at her rec-

ord. Her record has been a disaster. A[illegible] running against Hillary. It's not like I'm ru[illegible] against the rest of the world. I know people that are very, very capable that could do a very good job, but they could never get elected.

I can tell you right now. I can give you ten names of people that would do an extraordinary job, but there's no way they could ever get elected. They wouldn't know where to begin. It wouldn't be for them. But for governing, they would be good. I'm running and, you know, against one person.

CHUCK TODD:

You said there would be consequences for any company that tried to move a factory out. What—

DONALD TRUMP:

Absolutely, so simple—

CHUCK TODD:

—what is the consequence? Let's start with, you bring up Carrier a lot.

DONALD TRUMP:

It's so simple—

(OVERTALK)

CHUCK TODD:

Right, I understand that. But explain the consequences—

DONALD TRUMP:

Okay, here's the consequence—

CHUCK TODD:

What would it be?

DONALD TRUMP:

So Carrier comes in, they announce they're moving to Mexico, they fire all their people in Indiana, and they say, "Hi, well, here we are in Mexico, you know, enjoy your plant, enjoy the rest of your life," and you hire people from Mexico, okay? Now they make their product and they put it into the United States.

Well, we will have a very strong border, by the way, but they put it into the United States and we don't charge them tax. There will be a tax to be paid. If they're going to fire all their people, move their plant to Mexico, build air conditioners, and think they're going to sell those air conditioners to the United States, there's going to be a tax.

CHUCK TODD:

What kind of tax are you thinking?

DONALD TRUMP:

It could be 25 percent. It could be 35 percent. It could be 15 percent. I haven't determined. And it could be different for different companies. We have been working on trying to stop this government, because we don't know what we're doing. And not only Obama, they've been trying to stop this from before Obama. But they don't know. You know, they've done, they've tried lower interest loans, they've tried zero interest loans, these guys—

CHUCK TODD:

Well, some of these things aren't going to get through the World Trade Organization. There's—

DONALD TRUMP:

It doesn't matter. Then we're going to renegotiate or we're going to pull out. These trade deals are a disaster, Chuck. World Trade Organization is a disaster.

CHUCK TODD:

You know the concern on some of this—

DONALD TRUMP:

NAFTA is a disaster—

CHUCK TODD:

—is that it would rattle the world economy. Look what Brexit did to the world economy. Investors got rattled.

DONALD TRUMP:

What did it do? What did it do?

CHUCK TODD:

Now you—

DONALD TRUMP:

The stock market's higher now than it was when it happened. And by the way, I'm the only one of all of these people at the higher level of the wonderful world of politics, I'm the only one that said, "Brexit's going to happen." Remember, I was asked the question. I said, "Yeah, I think they're going to approve it. I

think they want independence. I don't think they want people pouring into their country." And I was—

CHUCK TODD:

You're not worried about, you think a fractured Europe is good for America?

DONALD TRUMP:

No, no. But we're spending a lot of money on Europe. Don't forget, Europe got together, why, primarily did they get together? So that they could beat the United States when it comes to making money, in other words, foreign trade—

CHUCK TODD:

Economic—

DONALD TRUMP:

Okay? And now we talk about Europe like it's so wonderful. Hey, I love Europe, I have property in Europe. I'm just saying, the reason that it got together was like a consortium so that it could compete with the United States—

CHUCK TODD:

So what you're saying is all this stuff is good for America, even if it's not good for Europe?

DONALD TRUMP:

Look, you take a look at Airbus. They make more planes now than Boeing, okay? They got together, all of these countries got together so that they could beat the United States. Okay, so we're in competition. So

you know, we're in competition in one way, we're helping them in another way. It is so messed up.

CHUCK TODD:

The Muslim ban. I think you've pulled back from it, but you tell me.

(BEGIN TAPE)

DONALD TRUMP:

We must immediately suspend immigration from any nation that has been compromised by terrorism until such time as proven vetting mechanisms have been put in place.

(END TAPE)

CHUCK TODD:

This feels like a slight rollback—

DONALD TRUMP:

I don't think that's—

CHUCK TODD:

Should it be interpreted—

DONALD TRUMP:

I don't think so. I actually don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. People were so upset when I used the word Muslim. Oh, you can't use the word Muslim. Remember this. And I'm okay with that, because I'm talking territory instead of Muslim.

But just remember this: Our Constitution is great. But it doesn't necessarily give us the right to commit

suicide, okay? Now, we have a religious, you know, everybody wants to be protected. And that's great. And that's the wonderful part of our Constitution. I view it differently.

Why are we committing suicide? Why are we doing that? But you know what? I live with our Constitution. I love our Constitution. I cherish our Constitution. We're making it territorial. We have nations and we'll come out, I'm going to be coming out over the next few weeks with a number of the places. And it's very complex—

CHUCK TODD:

Well I was just going to say—

DONALD TRUMP:

—we have problems in Germany and we have problems with France—

CHUCK TODD:

I was just going to ask that. Will this limit—

DONALD TRUMP:

You know, so it's not just the countries with—

CHUCK TODD:

—would this limit immigration from France?

DONALD TRUMP:

What we're going to have is a thing called—

CHUCK TODD:

They've been compromised by terrorism.

DONALD TRUMP:

They have totally been. And you know why? It's their own fault. Because they allowed people to come into their territory—

CHUCK TODD:

So you would toughen up. You're basically saying, "Hey, if the French want to come over here, you've got to go through an extra check."

DONALD TRUMP:

It's their own fault, because they've allowed people over years to come into their territory. And that's why Brexit happened, okay? Because the U.K. is saying, "We're tired of this stuff, what's going on, we're tired of." But listen to this—

CHUCK TODD:

You could get to the point where you're not allowing a lot of people to come into this country from a lot of places.

DONALD TRUMP:

Maybe we get to that point. Chuck, look what's happening. Look at what just took place in Afghanistan, where they blow up a whole shopping center with people, they have no idea how many people were even killed. Happened today. So we have to be smart and we have to be vigilant and we have to be strong. We can't be the stupid people—

CHUCK TODD:

So France, Germany, Spain—

DONALD TRUMP:

Here's my plan—

CHUCK TODD:

—places that have been compromised?

DONALD TRUMP:

—here is what I want: Extreme vetting. Tough word. Extreme vetting.

CHUCK TODD:

What does that look like?

DONALD TRUMP:

Tough. We're going to have tough standards. And if a person can't prove—

CHUCK TODD:

Give me one.

DONALD TRUMP:

—that they're from an area, and if a person can't prove what they have to be able to prove, they're not coming into this country. And I would stop the Syrian migration and the Syrian from coming into this country in two seconds. Hillary Clinton wants to take 550 percent more people coming in from that area than Barack Obama. I think she's crazy. I think she's crazy. We have no idea who these people are for the most part, and you know, because I've seen them on different shows—

CHUCK TODD:

All right.

DONALD TRUMP:

—but more importantly, I've read about it. I study it. There is no way that you can vet some of these people. There is no way. Law enforcement officials, I've had them in my office. I've talked to them.

CHUCK TODD:

You realize some of these folks have nowhere to go? They're truly victims of this civil war, what do you do with them?

DONALD TRUMP:

We will help them and we will build safe havens over in Syria, and we will get Gulf States—

CHUCK TODD:

We, the United States are going to build these safe havens?

DONALD TRUMP:

We, the United States, we'll get Gulf States to pay for it, because we right now, we're going to have $21 trillion very soon, trillion, in debt. We will do safe havens and safe zones in Syria and we will get nations that are so wealthy that are not doing anything. They're not doing much. They have nothing but money. And you know who I'm talking about, the Gulf States. And we will get them to pay for it. We would lead it. I don't want to pay because our country is going down the tubes. We owe too much money.

CHUCK TODD:

All right. Let me move to something with NATO. Mitch McConnell said this about your NATO remarks in the New York Times. He said it was a rookie mistake, and that once you, let me finish the comment here. "It's a rookie mistake, and it proves that Trump needs people like us around to help steer him in the right direction on some basic things."

DONALD TRUMP:

He's 100 percent wrong. Okay? He's 100 percent wrong if he said that. I didn't hear he said that—

CHUCK TODD:

He did say it.

DONALD TRUMP:

Okay, fine, fine—

CHUCK TODD:

New York Times—

DONALD TRUMP:

If he said that, he's 100 percent wrong. And frankly it's sad. We have NATO, and we have many countries that aren't paying for what they're supposed to be paying, which is already too little, but they're not paying anyway. And we're giving them a free ride or giving them a ride where they owe us tremendous amounts of money. And they have the money. But they're not paying it. You know why? Because they think we're stupid—

CHUCK TODD:

So Estonia is paying, and if they get invaded by Russia, you're there?

DONALD TRUMP:

I feel differently. I feel very differently—

CHUCK TODD:

But if a country's not doing—Britain hasn't done the two percent.

DONALD TRUMP:

We have countries that aren't paying. Now, this goes beyond NATO, because we take care of—we take care of Japan, we take care of Germany, we take care of South Korea, we take care of Saudi Arabia, and we lose on everything. We lose on everything. If Mitch McConnell says that, then he's wrong.

So all I'm saying is they have to pay. Now, a country gets invaded, they haven't paid, everyone says, "Oh, but we have a treaty." Well, they have a treaty too. They're supposed to be paying. We have countries within NATO that are taking advantage of us. With me, I believe they're going to pay. And when they pay, I'm a big believer in NATO.

But if they don't pay, we don't have, you know, Chuck, this isn't 40 years ago. This isn't 50 years ago. It's not 30 years ago. We're a different country today. We're much weaker, our military is depleted, we owe tremendous amounts of money. We have to be reimbursed. We can no longer be the stupid country.

(END TAPE)

CHUCK TODD:

When we come back, what Donald Trump says about David Duke, Bernie Sanders, and whether he really plans to spend millions for the sole purpose of defeating Ted Cruz and John Kasich. Sanders about Trump and about his reaction to Tim Kaine becoming Hillary Clinton's running mate. We're in Philadelphia, site of the Democratic National Convention. Stay with us.

COMMERCIAL BREAK

CHUCK TODD:

Such a beautiful city here. Welcome back. More now of my interview with Donald Trump at The Trump National Golf Club in Bedminster, New Jersey. And since we had a limited amount of time, I ended up speeding things up by asking Trump for some quick reaction to simply some very prominent names in the news.

(BEGIN TAPE)

CHUCK TODD:

I'm just going to literally throw out a name and you'll know the question I'm asking. Bernie Sanders.

DONALD TRUMP:

Great respect for what he's done. He is being taken advantage of, and frankly, the system was rigged, and I'm the first one to say it was rigged against him. And by the way—

CHUCK TODD:

You took after him. You took after him. You said for supporting Hillary Clinton, you think he needs to—

DONALD TRUMP:

Well, I'm not a fan of Bernie Sanders. But I am a fan of one thing that he talks about: Trade. He is the only one on that side that understands trade. Now, he can't do anything about it because that's not his thing. But he has been gamed. He has been, it's a rigged system against him. And what happened with the choice of Tim Kaine was a slap in the face to Bernie Sanders and everybody. I was shocked. I love it from my standpoint, I love—

CHUCK TODD:

Why do you love the Kaine pick?

DONALD TRUMP:

Well, first of all, he took over $160,000 of gifts. And they said, "Well, they weren't really gifts, they were suits and trips and lots of different things," all for 160—

CHUCK TODD:

Legal, legal in the state of Virginia.

DONALD TRUMP:

Bob McDonnell—I believe it was Bob McDonnell, in the meantime, he had to go to the United States Supreme Court to get out of going to jail—

CHUCK TODD:

Well, they proved to quid pro quo—

DONALD TRUMP:

—for taking a fraction of what—

CHUCK TODD:

They proved quid pro quo on that one.

DONALD TRUMP:

Excuse me, Bob McDonnell took a fraction of what Kaine took. And I think, to me, it's a big problem. Now, how do you take all these gifts? Hundreds of thousands of dollars. The other thing about him, he's bought and owned by the banks. And the third thing, he's in favor of TPP and every other trade deal that he's ever looked at. And that means he wants people not to work.

Now, he's going to change his tune. And I understand he's now going to say, "I'm against TPP." Hillary Clinton was totally in favor of TPP, which is the job killer, right? So was he. When she watched me on your show and other shows, all of a sudden she changed, because she knows she can't win that in a debate.

CHUCK TODD:

All right. Ted Cruz, I'm going to amend it, are you really going to fund a super PAC to help defeat him—

DONALD TRUMP:

Well, it's not the number one thing on my mind. Look, what's on my mind is beating Hillary Clinton. What's on my mind is winning for the Republican Par-

ty. With that being said, yeah, I'll probably do a super PAC, you know, when they run against Kasich, for $10 million to $20 million, against Ted Cruz. And maybe one other person that I'm thinking about—

CHUCK TODD:

Who's that other one person?

DONALD TRUMP:

—but I won't tell you that. I mean, he's actually such a small person, I hate to give him the publicity. But yes, I will probably do that at the appropriate at time. But I'm not going to do that until—

CHUCK TODD:

Oh, give me the small person here.

DONALD TRUMP:

No, no, don't worry about it. We'll give it to you another time.

CHUCK TODD:

All right, let me ask you about this one. David Duke announced his Senate candidacy claiming your agenda for his own, or essentially saying, "Glad that you spoke out."

DONALD TRUMP:

Are you ready, before you ask the question?

CHUCK TODD:

Newt Gingrich said, "Every Republican should repudiate this guy no matter what it takes"—

DONALD TRUMP:

I did. And I do. Are you ready? I want—

CHUCK TODD:

Would you support a Democrat over David Duke if that was what was necessary to defeat him?

DONALD TRUMP:

I guess, depending on who the Democrat, but the answer would be yes. Look, the answer is, as quick as you can say it. In fact, I went to answer you before you—

DONALD TRUMP:

Because last time with another person in your position, I did it very quickly. And they said, "He didn't do it fast enough." Rebuked. Is that okay? Rebuked, done—

CHUCK TODD:

Rebuked, done. Okay. Tax returns. A lot of conspiracy theories are being out there about why—what's in your tax returns. You would get rid of all these conspiracy theories tomorrow—

DONALD TRUMP:

Let me tell you—

CHUCK TODD:

Probably make people look silly—

DONALD TRUMP:

Let me tell you. Let me give you a little lesson on tax returns. First of all, you don't learn very much from a tax return. I put in to the federal elections group

100 and some-odd pages of my financials. It showed, as you know, that I'm much wealthier than anybody even understood, okay? Tremendous cash, tremendous assets, tremendous all that stuff. Okay, that's it. I'm going through a routine audit. Just a routine audit, and I've had it for I think 14 years, 13 years—

CHUCK TODD:

Why?

DONALD TRUMP:

Every year they audit me. It's routine government. I would never give my tax returns until the audit's finished. But remember this: Mitt Romney, four years ago, was under tremendous pressure to give his tax returns. And he held it and held it and held it, and he fought it, and he, you know, he didn't do too well, okay? But he didn't do anything wrong on his taxes. When he gave his tax returns, people forget, not now. He gave them in September, before the election—

CHUCK TODD:

So you still might release them—

DONALD TRUMP:

No, wait a minute, wait a minute. When he did, and his tax returns are a tiny peanut compared to mine, they went through his tax returns. And they found one little sentence, another little—there was nothing wrong. And they made him look bad. In fact I think he lost his election because of that.

CHUCK TODD:

Because of the tax returns?

DONALD TRUMP:

I think he lost. And I'll tell you why: He didn't do anything wrong. Mitt Romney did nothing wrong. But they would take out of, his weren't too big. Have you ever seen mine with the picture, they're like this high?

CHUCK TODD:

I have seen that picture, yes.

DONALD TRUMP:

Okay, so they took his tax return and they found a couple of little things. Nothing wrong, just standard. And they made him look very bad, very unfair. But with all that said, I'd love to give them, but I'm under audit. When the audit's finished I'll give them.

CHUCK TODD:

Finally, Roger Ailes. Is he helping you? Is he advising you?

DONALD TRUMP:

Well, I don't want to comment. But he's been a friend of mine for a long time, and I can tell you that some of the women that are complaining, I know how much he's helped them. And even recently, and when they write books that are fairly recently released, and they say wonderful things about him.

And now all of a sudden they're saying these horrible things about him. It's very sad. Because he's a very good person. I've always found him to be just a very, very good person. And by the way, a very, very talented person. Look what he's done. So I feel very

badly. But a lot of people are thinking he's going to run my campaign.

CHUCK TODD:

Yeah, well—

DONALD TRUMP:

My campaign's doing pretty well.

CHUCK TODD:

Mr. Trump, until we meet again.

DONALD TRUMP:

Thank you very much—

CHUCK TODD:

Thank you for your time, sir, appreciate it.

(END TAPE)

CHUCK TODD:

Up next, the man who had hoped to be the candidate being nominated by Democrats right here in Philadelphia this week, Senator Bernie Sanders of Vermont. What does he think of those leaked DNC e-mails? We'll get his first comments since it happened. We're going to be right back in just a minute.

COMMERCIAL BREAK

(BEGIN TAPE)

CHUCK TODD:

Tremendous shots there of a beautiful city. Welcome back. It's not the kind of thing you want happening days before your convention. This weekend, Wiki-

leaks released nearly 20,000 emails sent and received by members of the Democratic National Committee, some of which seem to confirm what a lot of people had suspected, that the DNC was playing favorites with Hillary Clinton over Bernie Sanders.

It appears Wikileaks either stole these emails or got them from a source. Remember, the DNC was hacked a few months ago. Among the emails was one from the DNC's Chief Financial Officer Brad Marshall that was looking ahead to the contests in Kentucky and West Virginia in early May. While not mentioning Sanders specifically by name, the email appeared to question Sanders' faith.

He wrote this, quote: "Does he believe in a god? I think I read he is an atheist. This could make several points difference with my peeps. My Southern Baptist peeps would draw a big difference between a Jew and an atheist." Well, Sanders has long believed that DNC Chair Debbie Wasserman Schultz was in Clinton's corner the whole campaign. Well, he joins me now. Senator Sanders, welcome back to Meet the Press.

And I should note that you talked about your belief in God last fall in an interview, I think, with your hometown paper there, so want to get that out of the way. So let me start with this question questioning your faith. Brad Marshall apologized on Facebook. Has anyone apologized to you personally? And what is your response to this entire discussion?

BERNIE SANDERS:

Well, no, nobody has apologized to me. And as you just mentioned, this really does not come as a shock to

me or my supporters. There is no question but the DNC was on Secretary Clinton's side from day one. We all know that. And I think, as I have said a long time ago, that the time is now for Debbie Wasserman Schultz to step aside, not only for these issues.

We need a Democratic Party that is open, that's going to bring young people and working people into it, that is going to stand up and take on the big money interests and fight for working families. I don't think Debbie has been that type of leader. So I would hope, and I said this many months ago, that she would—

CHUCK TODD:

Right.

BERNIE SANDERS:

—step aside, we would have new leadership.

CHUCK TODD:

And do you think it needs to happen now, today, before the start of the convention?

BERNIE SANDERS:

Well—

CHUCK TODD:

Would that help calm some of your supporters down?

BERNIE SANDERS:

Well, I think what is already happening is that it's clear she is not going to be speaking to the convention. That is the right thing. I think right now what we have got to focus on as Democrats is defeating perhaps

the worst Republican candidate that I have seen in my lifetime. Donald Trump would be a disaster for this country. He must be defeated.

We've got to elect Secretary Clinton on every single issue: fighting for the middle class on health care, on climate change, is a far, far superior candidate to Trump. That's where I think the focus has got to be.

CHUCK TODD:

Do you believe that the DNC's apparent favoritism cost you this race?

BERNIE SANDERS:

Well, I think you—there are a lot of reasons why one loses. We started off 50 points behind Secretary Clinton. We had the opposition of virtually the entire Democratic leadership in every state in this country. And by the way, in terms of media, we did not get the kind of media attention that somebody like a Donald Trump got, because media is not necessarily interested in the issues facing the middle class, more interested in attacks in personality. So I think there were a lot of reasons.

But I will tell you this, Chuck, from the bottom of my heart, I am extraordinarily proud of the campaign that we ran. The issues that we raised, the fact that we got 13 million Americans to vote for a political revolution. People who know the economy is rigged in favor of big money, people who know that our middle class continues to decline and we have to go outside of establishment politics and economics, people who know that we

need to reform a broken criminal justice system and we need comprehensive immigration reform.

The people—what we did in our campaign is bring people together to say, "You know what? This country, our government, belongs to all of us and not just a few." So I am very proud of the campaign we ran and the supporters that came on board.

CHUCK TODD:

So just to sum up here, these leaks, these emails, it hasn't given you any pause about your support for Hillary Clinton?

BERNIE SANDERS:

No, no, no. We are going to do everything that we can to protect working families in this country. And again, Chuck, I know media is not necessarily focused on these things. But what a campaign is about is not Hillary Clinton, it's not Donald Trump. It is the people of this country, people who are working longer hours for lower wages, people who do not have health care or are underinsured.

Hillary Clinton and I have worked together on a higher education proposal which will guarantee free tuition in public colleges and universities for every family in this country making $125,000 a year or less. We're going to fight for paid family and medical leave. Those are the issues that the American people want to hear discussed, and I'm going to go around the country discussing them and making sure that Hillary Clinton is elected president.

CHUCK TODD:

You know, The Green Party presumptive nominee, Jill Stein, put out a release yesterday about the emails. And she said this: "Democratic Party elites have been caught red-handed, sabotaging a grassroots campaign that tried to bring huge numbers of young people, independents and non-voters into their party. Instead, they have shown exactly why America needs a new major party, a truly democratic party for the people." Are you going to urge your supporters not to support Jill Stein and try to thwart her efforts to recruit your supporters?

BERNIE SANDERS:

Well, you know, let me just say this. As the longest serving Independent in the history of the United States Congress, as somebody who came into office by defeating an incumbent Democratic mayor in Burlington, Vermont, I know something about third party politics. And I respect Jill.

But right now, the focus, to my mind, is to make sure that Donald Trump does not become president of the United States. I think by temperament he is unqualified to be president. I think his views—you have a guy who's running for president who rejects science, doesn't even believe climate change is real, let alone wants to do something about it, wants to give hundreds of billions of dollars in tax breaks to the top two-tenths of one percent.

CHUCK TODD:

Let me ask you—

BERNIE SANDERS:

So my job right now is to see that Donald Trump is defeated, Hillary Clinton is elected.

CHUCK TODD:

You know, he makes a big deal out of the fact that you and he agree on one big issue, and that is trade deals, that these trade deals have been bad for the country. And he basically says that Clinton and Kaine, as a ticket, aren't—that their opposition, for instance, the TPP as sort of Johnny-come-lately, that it can't be trusted, and that Sanders supporters should support Trump if they care about trade. What do you say to that?

BERNIE SANDERS:

Well, I think in terms of who can be trusted, I think the evidence is clear that there has been no candidate that I have ever seen who lies more often than does Donald Trump. I mean and that's just not me saying it, that's what any independent media analysis has shown. So in terms of trust, you really can't trust a word, I think, that Mr. Trump has to say.

In terms of the TPP, it is no secret. I think our trade policies, for many, many years, have been a disaster. They have benefited corporate America at the expense of working people. Secretary Clinton has come out in opposition to the TPP, does not want to see it—

CHUCK TODD:

Right.

BERNIE SANDERS:

—appear in the lame duck Congress. That's my view, as well.

CHUCK TODD:

You know, some of your supporters are disappointed in the pick of Tim Kaine, that he's not progressive enough. I know Tim Kaine called you after he was picked. Do you consider Tim Kaine a progressive? And are you happy with this pick?

BERNIE SANDERS:

Look, you know, the pick is Secretary Clinton's. I've known Tim Kaine for a number of years. We've served in the Senate together, obviously. Tim is a very, very smart guy. He's a very nice guy. His political views are not my political views. He is more conservative than I am. Would I have preferred to see somebody like an Elizabeth Warren selected by Secretary Clinton? Yes, I would have.

CHUCK TODD:

And then finally, do you feel as if, that you, when you got Glass-Steagall, I wanted to ask about this, because it looks like the one thing that both parties may agree on in their platforms is putting—is being in favor of reinstating Glass-Steagall. Does this mean we will see that happen in the next Congress?

BERNIE SANDERS:

Well, I'm going to do everything that I can to make it happen. You know, when we talk about our campaign, one of the things that we have been able to do, Chuck,

is create the most progressive Democratic platform in the history of the Democratic Party, and that includes breaking up the large Wall Street banks and reestablishing Glass-Steagall.

I think the American people understand that we cannot continue to have a handful of reckless, irresponsible banks often acting illegally, that something has to happen. They have to be broken up.

CHUCK TODD:

All right, Senator Bernie Sanders. The big speech is tomorrow night. We'll be waiting for you here in a very, very hot Philadelphia, over 100 degrees.

BERNIE SANDERS:

Okay.

CHUCK TODD:

Senator Sanders, thanks for coming on. Good to see you, sir.

BERNIE SANDERS:

Thank you very much.

CHUCK TODD:

When we come back, reaction to Hillary Clinton's choice of Tim Kaine as a running mate, who showed why he might have appeal, unique appeal, to a very important voting bloc.

(BEGIN TAPE)

SEN. TIM KAINE:

Aprendilo valores de mi pueblo—faith, familia, y trabajo.

(END TAPE)

CHUCK TODD

And we'll be back in a moment from Philadelphia with this great panel. Rachel Maddow, Michael Steele, Andrea Mitchell, and Chris Matthews. Stay tuned.

(END TAPE)

CHUCK TODD:

And we'll be back in a moment from Philadelphia with this great panel, Rachel Maddow, Michael Steele, Andrea Mitchell, and Chris Matthews. Stay tuned.

COMMERCIAL TAPE

CHUCK TODD:

We are back. So much to talk about already. Our panel is here, Rachel Maddow, host of The Rachel Maddow Show on MSNBC, former chairman of the Republican National Committee, Michael Steele, he's sort of the fish out of water here in Philadelphia. Andrea Mitchell, NBC News, Chief Foreign Affairs Correspondent, host, of course, of Andrea Mitchell Reports on MSNBC. And a Philadelphia native himself, Mr. Brotherly Love Chris Matthews, host of Hardball—

RACHEL MADDOW:

Mr. Brotherly Love?

CHRIS MATTHEWS:

And sisterly affection.

CHUCK TODD:

—Sisterly affection here for the Penn grad.

CHUCK TODD:

And—this morning by the way we have new pictures of Tim Kaine walking into church this morning in Richmond, Virginia. He now realizes, and now his parish is realizing, what it's like to have Secret Service following around a member of the parish there. All right.

RACHEL MADDOW:

Know what his Secret Service name is going to be yet?

CHUCK TODD:

What do we think the code name should be?

ANDREA MITCHELL:

But we're not sure—

RACHEL MADDOW:

Well, the big joke was that if you're boring enough, your Secret Service name is Tim Kaine.

CHUCK TODD:

Ooh.

RACHEL MADDOW:

Right? That—

CHUCK TODD:

Those are old Johnny Carson and Jay Leno, Al Gore jokes—

CHUCK TODD:

All right, you guys are having already too much fun.

RACHEL MADDOW:

Sorry, sorry.

CHUCK TODD:

Let me just throw it out here. We heard what Bernie Sanders said about Tim Kaine. It was, that was tougher than I expected.

RACHEL MADDOW:

"His politics are not my politics."

ANDREA MITCHELL:

That's really—

RACHEL MADDOW:

"He does not share my political views." That's an aggressive take from Bernie. I'm not surprised. Bernie's an aggressive politician. And I think when Senator Sanders speaks at the DNC, I think everybody's going to be on the edge of their seat. I think that he is not going to pull a Ted Cruz because he's already made an endorsement.

CHUCK TODD:

Well, he said, "I'm for Hillary," and he was tough on Trump.

RACHEL MADDOW:

Yeah. And but he doesn't relish going after Trump. He likes going after the Democratic Party to try to move the Democratic Party. That's his target, always has been.

MICHAEL STEELE:

It's still obvious, he's not 'Feeling the Bern' for Hillary. And that was very obvious. And when you asked about the trust question, he didn't say he trusted Hillary Clinton. He said he didn't trust Donald Trump. So the reality of it is there's still some tension there that Bernie is reflecting among his supporters. And it was evident there. I mean—

RACHEL MADDOW:

He's got a mission that's bigger than one election. He always has.

MICHAEL STEELE:

That's true.

ANDREA MITCHELL:

And in fact, he could quiet the march that is planned to go from the center of Center City, and Rittenhouse Square all the way down at Independence Hall. This march is going to disrupt the city today, no matter how peaceful, because this is a city, in 100-degree heat, that is planning for a convention. And it's going to be a very large outpouring. He also said—

CHUCK TODD:

And by the way, the hotter it is, the crankier people will be.

ANDREA MITCHELL:

Yeah. And he also says that Tim Kaine doesn't share his politics, not only that, but that he would have preferred Elizabeth Warren. He made it very clear; Tim Kaine is a nice guy, but he's not endorsing or embracing someone who Hillary Clinton—

CHUCK TODD:

There's a painful look in your face, Chris.

ANDREA MITCHELL:

—called Tim Kaine a progressive.

CHRIS MATTHEWS:

He didn't get to pick. Hillary Clinton did. And I've watched Hillary Clinton. I've watched a lot of politicians over the years. You can tell when they're actually happy, not when they fake the laugh or anything else. She looked delighted during his speech yesterday. And I haven't seen her that delighted in a long time. She had found her guy to be her running mate. I think she loved it.

And I think one thing we're getting all excited about, I understand why the progressives are upset. But one thing historically we all know is the selection of a vice president is a poor predictor of the direction of that administration.

RACHEL MADDOW:

Yeah.

CHRIS MATTHEWS:

FDR picked John Nance Garner—

RACHEL MADDOW:

It's not a policy pick.

CHRIS MATTHEWS:

Kennedy picked another conservative from the south, Lyndon Johnson, relatively conservative. And then we got the New Deal out of that and we got the Great Society we got the New Frontier. It's a poor predictor. Now, if this is about spoils, they've got an argument. They wanted a piece of the action. But there's differences between spoils and direction.

CHUCK TODD:

I want to throw out the one thing that Trump's trying to hit Kaine on, well, two things. But the one big one is the gifts in Virginia.

RACHEL MADDOW:

Yeah.

CHUCK TODD:

I only throw it out there is that I heard Ed Rendell ask to defend it. And he struggled, Andrea. He said, "Well, it's illegal in Pennsylvania."

ANDREA MITCHELL:

Virginia—

CHUCK TODD:

Okay. And it's legal in Virginia. That wasn't exactly a resounding defense.

ANDREA MITCHELL:

Yeah. Virginia has a very strange, let's face it, strange gift law. The difference with Bob McDonnell, who was convicted, and then the Supreme Court overturned it, is there was no quid pro quo. He declared it. That was the main thing. He declared everything, put it down, in fact, computed higher numbers to staying in friends' houses. He put everything down. He was meticulous about it.

So they don't think there's a big ethics thing. Just on his progressivity or lack of it, he has this civil rights background. I mean I was in the room. And what you saw on T.V. yesterday in Miami, in that largely Hispanic campus, that wonderful campus in Miami, it was extraordinary. The enthusiasm for him and the affection. And having watched her all of these years, you're absolutely right, Chris—

CHUCK TODD:

You know—

ANDREA MITCHELL:

—she found her guy. She was a happy camper.

RACHEL MADDOW:

He's not a progressive, but they will tell a very progressive story about his history. The party has moved to the left while he sort of always been a solid liberal.

CHUCK TODD:

Both of them are trying to—

ANDREA MITCHELL:

Yeah.

CHUCK TODD:

I feel like both Clinton and Kaine are trying to catch up to the party's movement.

CHRIS MATTHEWS:

That's so true.

ANDREA MITCHELL:

Well, on guns he was always there. He was heroic in Virginia on gun laws.

CHUCK TODD:

That they're moving—and Michael, let me ask you this. The Trump camping says, "We love the Kaine pick." And here's their reasoning. They love the Kaine pick because it reinforces that they're the political professionals, that here's Tim Kaine, and all he's done in life, is been in office for the last 25 years.

MICHAEL STEELE:

Right.

CHUCK TODD:

And the whole point of Trump is Trump's Mr. "I'm the total outsider." If they want to double down on that, fine, go ahead. What do you say?

RACHEL MADDOW:

Except Mike Pence

MICHAEL STEELE:

Right, right, right.

CHUCK TODD:

They pay no attention to that. I brought that brought to them. I said, "What about Pence?" And they're like, "Well, it's the top of the ticket."

MICHAEL STEELE:

"Ignore that man behind the curtain."

CHUCK TODD:

What do you say to that? Did they have a point or not?

MICHAEL STEELE:

Well, they'll have a—I think the broader point, is an interesting one. Because what he's comparing himself —he's comparing himself, Trump, to Kaine—

CHUCK TODD:

Right.

MICHAEL STEELE:

—and Clinton. So it's me and against them.

CHUCK TODD:

Yeah.

MICHAEL STEELE:

Pence is not a part of that equation, necessarily.

RACHEL MADDOW:

Yeah.

MICHAEL STEELE:

So when he's talking about the maverick, the outsider, he's—he's assuming his ticket is total that.

ANDREA MITCHELL:

Well, Pence wasn't even a part of his own rollout.

MICHAEL STEELE:

Right.

ANDREA MITCHELL:

If you remember. And that was—

RACHEL MADDOW:

He couldn't get a word in edgewise.

ANDREA MITCHELL:

Hillary Clinton spoke about Tim Kaine—

MICHAEL STEELE:

I think their strength, Chuck, is gonna be on the argument—this notion that Tim Kaine is progressive is just not believable. And for a whole host of reasons. I think that's an opening for a lot of folks on Trump's side.

RACHEL MADDOW:

You can, there are element of his record that are not progressive, but on balance, I would argue that he is.

ANDREA MITCHELL:

I would argue that too.

CHRIS MATTHEWS:

But one thing, the guy's two doors from you, if you're president. Look at the structure of the West Wing now. It's not some guy that goes back to Maine like Lincoln's first vice president. He or she is right with you.

MICHAEL STEELE:

Right.

CHRIS MATTHEWS:

You want a good person two doors for you, somebody who has values. And it's not just smart politics. I think what Hillary Clinton's going to love having is a guy who's a true blue good guy. And I think he is a progressive on all the moral issues—

CHUCK TODD:

Let's sneak in a break here. When we come back, I want to get into the DNC e-mail situation. And I also want to get your guys' reaction to some interesting comments from Donald Trump. Yeah, you know that guy that was at the start of the show. We'll be right back.

COMMERCIAL BREAK

CHUCK TODD:

Welcome back, panelists here. Before we jump to Trump, the DNC email leaks, Cleveland, we expected rowdiness, Never Trumpsters, and all that stuff. We

expect order here. But I wonder, Rachel, if—look, I'm hearing from the Bernie bros. I'm in one of the emails just—I'm the complaint department here sometimes at NBC. Somebody was complaining about coverage. And I said, "Okay, let's talk on the phone," or whatever. But we didn't do anything about it, because I get complaints about coverage every hour, every day.

RACHEL MADDOW:

Yeah.

CHUCK TODD:

But I think Bernie supporters may like this place, at least outside. They may be upset, and they may do something about it.

RACHEL MADDOW:

Yeah. I mean and, you know, there will be that big protest that Andrea was talking about today, to start things off. And there will be a lot, there will be hundreds of Bernie delegates insides the room. Now honestly, from the top, down, he said, "We've got to elect Hillary Clinton." He's been unequivocal about that, that's the most important thing.

It'll be interesting to see whether the rules fights and the platform fights end up, in the end, when there's need to get nailed down with those votes, there is some dissent and chaos there. There might be.

CHRIS MATTHEWS:

One thing is—

CHUCK TODD:

Do you think Debbie Wasserman Schultz needs to get out now?

CHRIS MATTHEWS:

Well, look—

CHUCK TODD:

Not even gavel it in?

CHRIS MATTHEWS:

This is not a mystery story. This isn't Colombo.

CHUCK TODD:

Yeah.

CHRIS MATTHEWS:

We knew from the beginning, watching the debate schedule, put together by the DNC—

CHUCK TODD:

Sure.

CHRIS MATTHEWS:

—that they were tilting the scales to Hillary Clinton. Middle of the night debates, Sunday morning—it was an absurd debate schedule. And it just said, "We're for Hillary, we don't want the new guy to get all the attention."

ANDREA MITCHELL:

And what Bernie said to you is that she's not going to be giving a speech. When does the party chair not

give a speech at the convention? And apparently that is the case.

CHUCK TODD:

And then right now, though, they will gavel in.

RACHEL MADDOW:

Thank god we haven't—her quitting right now before —I mean, the DNC's gonna be running a big part of the ground game for the whole—

CHRIS MATTHEWS:

Yeah.

RACHEL MADDOW:

You know, you don't—

CHUCK TODD:

But I tell you, this—

RACHEL MADDOW:

It would be suicide for the chair to jump out now—

CHUCK TODD:

This doesn't help her own fight for reelection, which I still think she's going to be okay.

RACHEL MADDOW:

No, but—

CHUCK TODD:

It's a district that she knows very well. But—

ANDREA MITCHELL:

But Bernie endorsed her opponent.

RACHEL MADDOW:

But her reelection fight is in her district.

CHRIS MATTHEWS:

Right.

RACHEL MADDOW:

It's not to be the chair of the DNC, that's next year.

CHUCK TODD:

All right. Michael Steele, what'd you hear from Donald Trump? Did it make you feel better or worse about his chances?

MICHAEL STEELE:

Well, I think Donald Trump did a couple of things he needed to do. One was, and you could see it in the room that night, people began to say, "Okay, I can get there." The speech that he gave, when you read it, seemed a lot darker and harsher than when he delivered it. He delivered it in a way—

RACHEL MADDOW:

I thought the opposite.

MICHAEL STEELE:

Yeah, yeah.

RACHEL MADDOW:

When reading it, I wasn't freaked out.

MICHAEL STEELE:

Yeah.

RACHEL MADDOW:

And then, when I saw him give it, I pulled the covers up.

MICHAEL STEELE:

No, for me, it was the reverse. Because the reaction. I'm sitting in the room and I'm getting the reaction from the crowd.

RACHEL MADDOW:

Mmm.

MICHAEL STEELE:

And the reaction from the crowd was, "This guy is going to be a fighter." And I think that's a strong message for him coming out of this convention.

CHRIS MATTHEWS:

Rachel, you have never pulled the covers up.

RACHEL MADDOW: Oh no, I meant proverbially

CHUCK TODD: There's a lot of personal information here. Woah, it's Sunday morning, guys.

MICHAEL STEELE:

I thought he did what he needed to do, Chuck. I do.

RACHEL MADDOW:

Standing under those 15-foot-tall letters with Trump, and then his head comes up there. And then he spent 76 minutes screaming, red faced, about terrorism and

death and destruction and "I'm the only one who can fix it"—

CHRIS MATTHEWS:

I think that was technical. I don't think he knew how to read a script like that. I don't think he had the ability to—his daughter knew how to do it. It's tough to read a script in a conversational manner. So you end up doing this sort of scream thing.

RACHEL MADDOW:

But it takes an ego to turn a 30 minute script into a 78 minute rant.

ANDREA MITCHELL:

But he said that he was the person who would fix everything. And they're focusing on that. But, you know, Kaine was focusing on that. You know, it is the "we" not the I. They're comparing him to a dictator.

MICHAEL STEELE:

But the—

ANDREA MITCHELL:

It is the language and the delivery, Michael—

MICHAEL STEELE:

Don't lose sight of the fact that a lot of Americans out there are saying it is the "we" who screwed us up to this point.

CHRIS MATTHEWS:

Yeah.

MICHAEL STEELE:

It is the we who've gotten us into this mess.

ANDREA MITCHELL:

It's a different way of defining democracy, Michael.

MICHAEL STEELE:

So they're looking for the I, someone who's going to step forward as a leader, to get us through this mess. This is the bifurcation of the of the population, the voting population right now. And it's going to be interesting to see which one of these arguments win—

RACHEL MADDOW:

Is this about the hunger for a strong man, is that what you're talking about?

MICHAEL STEELE: Yeah no, there really is Rachel.

RACHEL MADDOW: We've seen this around the world, it's not supposed to be us.

CHRIS MATTHEWS:

I've heard Bernie make your point.

MICHAEL STEELE:

Yes!

CHRIS MATTHEWS:

It's that we have to reach outside the establishment to get the solution to these really bad economic problems affecting the working people of this country.

MICHAEL STEELE:

Right.

CHRIS MATTHEWS:

Same message. Different sides.

MICHAEL STEELE: Same message.

RACHEL MADDOW:

Same message. The question is whether or not one man is supposed to deliver salvation for the country. We're not supposed to be that kind of country.

CHUCK TODD:

I want to throw one more. He seemed, at least in the interview with me, he goes after Mitch McConnell, goes after Ted Cruz, goes after John Kasich.

ANDREA MITCHELL:

He is fearless in that regard.

CHUCK TODD: He really is.

ANDREA MITCHELL:

He is not going to moderate himself.

RACHEL MADDOW:

You didn't even ask about Kasich. And he's bringing it up

CHUCK TODD:

No, exactly. He brought Kasich up himself.

ANDREA MITCHELL:

And another player to be named player, who, you know, remain—could be one of the senators like Jeff Flake. Look, the fact is that he is not playing by anybody's ground rules except Donald Trump's. What he

said about N.A.T.O. was extraordinary because he doubled down on that. And the whole system of collect your security in Europe, if you're in Poland today, you are not reassured—

CHUCK TODD:

What's amazing is the Trump campaign tried to walk it back all last week on the N.A.T.O. stuff. And he's basically saying, "Don't walk it back."

RACHEL MADDOW:

Even beyond N.A.T.O. to talk about Europe as a threat to America is what's good for Europe is bad for America and we have an interest in Europe being weak and divided, they only got together to screw us? Like, hold on a second.

CHRIS MATTHEWS:

Yeah, it'll play in Scranton. It'll play up there in the Eerie, Pennsylvania it'll play.

RACHEL MADDOW:

The European Union—came out of the way to try to not have World War III.

CHRIS MATTHEWS:

Because people think we're being shoved around and exploited and he's saying, "I'm going to shove back."

ANDREA MITCHELL:

They are our markets—markets, allies—

CHUCK TODD:

You guys great. I'm going to try to get another half hour. But let me sneak in this. We'll be back in a moment with our—we'll call it halftime segment. No, it's Endgame Segment. And we'll look at Hillary Clinton's popularity compared to other Democratic nominees on the eve of their conventions.

COMMERCIAL BREAK

CHUCK TODD:

The panel never stops interacting here. Seriously we just went to a commercial break—

RACHEL MADDOW:

—wants more with France!

CHUCK TODD:

It's endgame time. Look, I want to show you here very quickly some numbers, because it will help us judge whether this is a successful convention for Hillary Clinton. These are favorable ratings, personal favorable ratings, whether you're right side up or upside down, from our NBC Wall Street Journal poll, for every Democrat going back to '92. And as you can see, Hillary Clinton in the worst shape of any presumptive nominee going into their convention.

Now, let me show you what everybody else came through after their convention. So successful convention for Bill Clinton, successful one for Al Gore. Flat for John Kerry, successful, Barack Obama. Obviously, we'll find out, for Hillary Clinton, what does she need to—

ANDREA MITCHELL:

Well, what they are going to do is they're going to have gauzy films, the same kind of films you saw in 1992, the same producers—

CHUCK TODD:

And JFK?

ANDREA MITCHELL:

They're going to have all of these films, biography, résumé. They know that her résumé is not resonating with millennials. People know what she did, they don't know—they know the list of what she was. They don't know what she actually did, what she accomplished.

CHRIS MATTHEWS:

Yeah.

ANDREA MITCHELL:

They're going to do all of that. The balance is going to be very different.

RACHEL MADDOW:

—because T.V. networks don't always take the movies anymore—

ANDREA MITCHELL:

Well, they're going to have to validators.

RACHEL MADDOW:

Yeah.

ANDREA MITCHELL:

They're going to have people on that podium behind it who are going to talk about things she has done for them. And it's going to be very much about her and much less about taking down Trump

CHRIS MATTHEWS:

I think the magic moment in this convention's going to be Thursday night. And a lot of women, and a lot of men, too, are going to see Hillary Clinton as the first party nominee, who's probably going to be like the president. She has the advantage right now. And there are going to be misty eyes all across the country.

And any men at that moment who make a wisecrack are going to be guaranteeing another vote for Hillary Clinton. I think it's a very emotional moment for people. They've haven't quite got to it because of all is mishegas that's gone on this year. I think it's going to be magical. And if Hillary Clinton just stands there with a little emotion, this is an amazing historic moment.

CHUCK TODD:

Michael was the Republican convention too anti-Clinton and not enough pro-Trump?

MICHAEL STEELE:

No. The Republican convention had to go anti-Clinton—

CHUCK TODD:

Had to do that?

MICHAEL STEELE:

—because of the Trump issues.

CHUCK TODD:

What about this one?

MICHAEL STEELE:

This one? I was thinking, as you guys were talking about Barack Obama and talking about Hillary Clinton being likable enough, this is going to be a convention in which they're going to showcase her so you can like her. Because people, those numbers show, don't like her. So it's going to be everything you just said, Chris, plus more. The problem is what happens afterwards. And that's where Hillary Clinton's going to have to contine.

CHUCK TODD:

Here's an out question for all of you. Besides Hillary Clinton's speech, what will be the other buzziest speech or speaker when we walk away from this convention?

RACHEL MADDOW:

We're going to have a huge one on night one. Bernie is a big deal.

MICHAEL STEELE:

Bernie.

RACHEL MADDOW:

The Democratic Party is going through a transformation. Liberals are having their moment. And this convention has to reflect it.

CHRIS MATTHEWS:

Every Democratic convention I can remember, going back to, God, '64, the best speech was never given by the nominee, whether it's Bobby Kennedy or it's Jesse Jackson, or it's Mario Cuomo.

MICHAEL STEELE:

Right.

CHRIS MATTHEWS:

The candidates never have been able to deliver the best speech. So I would bet on Bernie.

RACHEL MADDOW:

It was Trump Jr. last week.

CHRIS MATTHEWS:

Bernie or President Obama.

ANDREA MITCHELL:

Michelle Obama and Barack Obama on day two.

CHUCK TODD:

I think it's Barack Obama on Wednesday night. I think it's going to be to Hillary Clinton what Bill Clinton was to Barack Obama four years ago. All right. That's all for this Sunday morning.

CHRIS MATTHEWS:

We agree.

CHUCK TODD:

I'll be hosting a special edition of Meet the Press Daily tonight at 5:00 Eastern on MSNBC. I know that's

what everybody on this table will be watching. And then, throughout the week, I'll be joined by my colleagues Lester Holt and Savannah Guthrie right here at The Wells Fargo Center for convention coverage on the network beginning at 10:00 Eastern, 7:00 Pacific. If you missed it last week, you should be regretting it. Watch us this week. And of course we'll be back next Sunday. Because if it is Sunday, Meet the Press.

* * *END OF TRANSCRIPT* * *

The Washington Post

The Fix

Trump asked for a 'Muslim ban,' Giuliani says—and ordered a commission to do it 'legally'

By Amy B Wang Jan. 29

Former New York mayor Rudy W. Giuliani said President Trump wanted a "Muslim ban" and requested he assemble a commission to show him "the right way to do it legally."

Giuliani, an early Trump supporter who once had been rumored for a Cabinet position in the new administration, appeared on Fox News late Saturday night to describe how Trump's executive order temporarily banning refugees came together.

Trump signed orders on Friday not only to suspend admission of all refugees into the United States for 120 days but also to implement "new vetting measures" to screen out "radical Islamic terrorists." Refugee entry from Syria, however, would be suspended indefinitely, and all travel from Syria and six other nations—Iran, Iraq, Libya, Somalia, Sudan and Yemen—is suspended for 90 days. Trump also said he would give priority to Christian refugees over those of other religions, according to the Christian Broadcasting Network.

Fox News host Jeanine Pirro asked Giuliani whether the ban had anything to do with religion.

[EXHIBIT 5]

"How did the president decide the seven countries?" she asked. "Okay, talk to me."

"I'll tell you the whole history of it," Giuliani responded eagerly. "So when [Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"

Giuliani said he assembled a "whole group of other very expert lawyers on this," including former U.S. attorney general Michael Mukasey, Rep. Mike McCaul (R-Tex.) and Rep. Peter T. King (R-N.Y.).

"And what we did was, we focused on, instead of religion, *danger*—the areas of the world that create danger for us," Giuliani told Pirro. "Which is a *factual* basis, not a religious basis. Perfectly legal, perfectly sensible. And that's what the ban is based on. It's not based on religion. It's based on places where there are substantial evidence that people are sending terrorists into our country."

It was unclear when the phone call Giuliani took place and when the commission began working. An email to the White House press office was not immediately returned Sunday.

Clips of the exchange between Giuliani and Pirro quickly went viral Saturday night, with some claiming that Giuliani's statement amounted to admitting Trump's intent had been to institute a ban based on religion.

Others, including Trump senior adviser Kellyanne Conway and White House Chief of Staff Reince Priebus, have insisted it is not a ban on Muslims, but rather one

based on countries from which travel was already restricted under Barack Obama's administration.

Priebus appeared on CBS's "Face the Nation" Sunday morning to say it was possible Trump would expand the list of countries included in the travel ban.

"You can point to other countries that have similar problems, like Pakistan and others," Priebus told host John Dickerson. "Perhaps we need to take it further."

Priebus also said there had been weeks of work and "plenty of communication" between the White House, the State Department and the Department of Homeland Security regarding the ban.

"We didn't just type this thing up in an office and sign up," he told Dickerson.

Later on the same program, Rep. Keith Ellison (D-Minn.) called out Giuliani's interview with Pirro from the night before.

"They can't deny that this is a Muslim ban," Ellison told Dickerson. "On the campaign trail, [Trump] said he wanted a Muslim ban. . . . Rudolph W. Giuliani who helped him write it said that they started out with the intention of a Muslim ban and then they sort of 'languaged' it up so to try to avoid that label, but it is a religiously based ban."

Senate Democrats vowed to draft legislation to block the travel ban.

"We're demanding the president reverse these executive orders that go against what we are, everything we have always stood for," Senate Minority Leader Char-

les E. Schumer (D-N.Y.) said in a news conference Sunday morning, noting later that his middle name, Ellis, was originally inspired by Ellis Island.

"It was implemented in a way that created chaos and confusion across the country, and it will only serve to embolden and inspire those around the globe those that will do us harm," Schumer added of the ban. "It must be reversed immediately."

Trump's executive order sparked massive protests at airports around the country Friday and Saturday, as reports surfaced that dozens of travelers from the affected countries, including green-card holders, were being detained.

The American Civil Liberties Union filed a lawsuit Saturday morning challenging Trump's order after two Iraqi men with immigrant visas were barred from entering the United States at New York's John F. Kennedy International Airport.

As Giuliani was speaking, Fox News simultaneously aired an alert that noted federal judge Ann M. Donnelly had issued a stay to stop the deportations nationwide.

Donnelly wrote that there was a strong likelihood the order had violated the petitioners' rights to due process and equal protection by the Constitution.

"There is imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa-holders, and other individuals from nations subject to the January 27, 2017 Executive Order," Donnelly wrote.

The ACLU hailed the victory.

"Clearly the judge understood the possibility for irreparable harm to hundreds of immigrants and lawful visitors to this country," ACLU executive director Anthony D. Romero said in a statement. "Our courts today worked as they should as bulwarks against government abuse or unconstitutional policies and orders. On week one, Donald Trump suffered his first loss in court."

On Sunday, the Department of Homeland Security issued a statement saying it did not plan to back off enforcing Trump's orders.

"President Trump's Executive Orders remain in place—prohibited travel will remain prohibited, and the U.S. government retains its right to revoke visas at any time if required for national security or public safety," the statement read. "President Trump's Executive Order affects a minor portion of international travelers, and is a first step towards reestablishing control over America's borders and national security."

The department said that less than 1 percent of daily international air travelers to the United States had been "inconvenienced" on Saturday.

Matthew Kolken, an immigration attorney based in Buffalo said there has been "a systemic bias against individuals from Muslim countries in the U.S. immigration departments" for years, including under the Obama administration.

"This isn't unprecedented," Kolken told The Washington Post by phone Sunday. "The unfortunate reality is

the executive branch does have vast discretionary authority to determine who they are going to [allow in or not]."

Still, Kolken said, he believes "Trump has gone a step further without a doubt" in including even people who are lawful permanent residents and suspending all immigration applications from people from the seven countries on the banned list.

If there was evidence of disparate treatment of individuals from the same country—if there were anecdotal evidence of, for example, a Syrian family of one religious background allowed to enter over that of another religious background—then that is where lawsuits could come into play, he said.

"The question becomes whether they're trying to do an end-around by couching the ban as a country-specific ban based on a security-related issues when in reality it's a religious ban," Kolken said.

DISSENT CHANNEL

SENSITIVE BUT UNCLASSIFIED

TO:
FROM:
SUBJECT: Dissent Channel: Alternatives to Closing Doors in Order to Secure Our Borders

(U) The following is a Dissent Channel message from

(SBU) Summary: We are writing to register our dissent to the State Department's implementation of President Trump's Friday, January 27, 2017 Executive Order on "Protecting The Nation From Foreign Terrorist Entry Into The United States," which, among other things, blocks the Department of State from issuing immigrant and nonimmigrant visas to citizens of Syria, Iraq, Libya, Somalia, Sudan, and Yemen for a minimum 90 day period with an unclear timeline for when issuance would resume. As consular professionals, Foregin Service Officers, and members of the Civil Service, we see every day the value that "**Secure Borders and Open Doors**" brings to our nation. A policy which closes our doors to over 200 million legitimate travelers in the hopes of preventing a small number of travelers who intend to harm Americans from using the visa system to enter the United States will not achieve its aim of making our country safer. Moreover, such a policy runs counter to core American

values of nondiscrimination, fair play, and extending a warm welcome to foreign visitors and immigrants. Alternative solutions are available to address the risk of terror attacks which are both more effective and in line with the Department of State and American values.

This Ban Does Not Achieve Its Aims—And Will Likely Be Counterproductive

(SBU) This ban, which can only be lifted under conditions which will be difficult or impossible for countries to meet, will not achieve its stated aim of to protect the American people from terrorist attacks by foreign nationals admitted to the United States. Despite the Executive Order's focus on them, a vanishingly small number of terror attacks on U.S. soil have been committed by foreign nationals who recently entered the United States on an immigrant or nonimmigrant visa. Rather, the overwhelming majority of attacks have been committed by native-born or naturalized U.S. citizens—individuals who have been living in the United States for decades, if not since birth. In the isolated incidents of foreign nationals entering the U.S. on a visa to commit acts of terror, the nationals have come from a range of countries, including many (such as Pakistan or Saudi Arabia) which are not covered by the Executive Order.

(SBU) Given the near-absence of terror attacks committed in recent years by Syrian, Iraqi, Irani, Libyan, Somalia, Sudanese, and Yemeni citizens who are in the U.S. in after entering on a visa, this ban will have little practical effect in improving public safety.

(SBU) If this ban will not prevent terror attacks from occurring, what will it do?

— (SBU) It will immediately sour relations with these six countries, as well as much of the Muslim world, which sees the ban as religiously-motivated. These governments of these countries are important allies and partners in the fight against terrorism, regionally and globally. By alienating them, we lose access the intelligence and resources need to fight the root causes of terror abroad, before an attack occurs within our borders.

— (SBU) It will increase anti-American sentiment. When the 220 million citizens of these countries lose the opportunity to travel to the U.S. overnight, hostility towards the United States will grow. Instead of building bridges to these societies through formal outreach and exchanges and through informal people-to-people contact, we send the message that we consider all nationals of these countries to be an unacceptable security risk. Almost one-third of these countries' combined populations are children under the age of 15; there is no question that their perception of the United States will be heavily colored by this ban. We are directly impacted the attitudes of current and future leaders in these societies—including those for whom this may be a tipping point towards radicalization.

— (SBU) It will have an immediate and clear humanitarian impact. Every day foreign nationals come to the United States to seek medical treat-

ment for a child with a rare heart condition, to attend a parent's funeral, or to help a relative in distress. For citizens of these countries, a blanket ban on travel will not just ruin vacation plans but potentially cut off access to life-saving medical treatment or impose terrible humanitarian burdens. While the Executive Order allows for the Secretary of State or the Secretary of Homeland security to admit travelers from these countries on a case-by-case basis, it is unrealistic to think that this will be feasible to implements for the thousands of aliens with urgent and compelling needs to travel.

— (SBU) It will have a negative impact on the U.S. economy. According to the Department of Commerce, foreign travelers collectively injected almost $250 billion into the U.S. economy in 2015 alone, supporting over one million American jobs. Foreign students along contribute more than $30 billion to the U.S. economy. Preventing travelers from these six countries from spending their money in the U.S. will immediately decrease that amount; more perniciously, this ban can be expected to cause an overall drop in traveler dollars as the U.S. quickly shed its welcoming "Secure Borders, **Open Doors**" reputation.

(SBU) The end result of this ban will not be a drop in terror attacks in the United States; rather, it will be a drop in international good will towards Americans and a threat towards our economy.

We Are Better Than This Ban

(SBU) Looking beyond its effectiveness, this ban stands in opposition to the core American and constitutional values that we, as federal employees, took an oath to uphold.

(SBU) The United States is a nation of immigrants, starting from its very origins. The concept that immigrants and foreigners are welcome is an essential element of our society, our government, and our foreign policy. So, too, is the concept that we are all equal under the law and that we as a nation abhor discrimination, whether it is based on race, religion, sex, or national origin. Combined together, that means we have a *special* obligation to maintain an immigration system that is as free as possible from discrimination, that does not have implied or actual religious tests, and that views individuals as individuals, not as part of stereotyped groups.

(SBU) The Executive Order frames the ban as a 90-day suspension of entry for these nationals until their countries can set up arrangements to provide adequate information to determine that an individual seeking a benefit is who the individual claims to be and is not a security or public-safety threat. This is a high, vague, and nebulous bar. In some cases, the governments of these countries may be wholly incapable of providing this information; in others, the government may be unwilling. In either case, individual citizens will pay the price—a situation which runs counter to U.S. values of fair play and offering equal opportunities to all.

(SBU) Banning travelers from these seven countries calls back to some of the worst times in our history. Law enacted in the 1920s and which lasted through the 1960s severely restricted immigration based on national origin and, in some cases, race. The decision to restrict the freedom of Japanese-Americans in the U.S. and foreign citizens who wanted to travel to or settle in the U.S. during the 1940s has been a source of lasting shame for many in our country. Decades from now, we will look back and realize we made the same mistakes our predecessors: shutting borders in a knee-jerk reaction instead of setting up systems of checks that protect our interests and our values.

Alternative Ways Forward

(SBU) Just as equality and multiculturalism are core American values, so too is pragmatism. And there are pragmatic ways to achieve our common goals to protect the American people from terrorist attacks by foreign nationals admitted to the United States and to secure a better and more prosperous future.

(SBU) Rather than a blanket ban on travel of over 200 million citizens, we need to strengthen our targeted and interagency approach to deterring, detecting, and subverting attacks. We should not focus our screening and vetting on specific nationalities at the expense of missing the forest for the trees but should turn those tools to cover the full range of sources of terror, including those who may hold "friendly" or even U.S. passports.

(SBU) There is no question that the visa process can be improved and refined to better detect individuals who

intend to exploit United States immigration laws for malevolent purposes. We need to expand existing interagency cooperation between the different elements of the government responsible for border security and protection of the homeland. This includes cooperation with state, local, campus, and tribal law enforcement, who in many cases are best situated to detect threats. The Visa Security Program which embeds Department of Homeland Security staff into consular sections around the world has proven the effectiveness of incorporating a law enforcement perspective into the visa process; this approach should be expanded.

(SBU) Continuous vetting program for visa holders—which looks at all visa holders, not just those of specific nationalities—allows our law enforcement and intelligence bodies to act on new information and to focus on individuals that may become radicalized. This vetting should be expanded and made more comprehensive. Likewise, the Visa Viper Program, which allows posts overseas to report on potential threats, should be strengthened to become a more reliable source of intelligence.

(SBU) The Department of State and the U.S. government already has numerous tools already at its disposal to secure its visa process: access to law enforcement databases, biometric screening, Security Advisory Opinions, continuous vetting. If we haven't accomplished our goals so far, then let's strengthen and improve these tools. And let's develop new tools: cutting-edge data analytics, social media tracking, data mining, aggressive outreach.

(SBU) We do not need to place a blanket ban that keeps 220 million people—men, women, and children—from entering the United States to protect our homeland. We do not need to alienate entire societies to stay safe. And we do not need to sacrifice our reputation as a nation which is open and welcoming to protect our families. It is well within our reach to create a visa process which is more secure, which reflects our American values, and which would make the Department proud.

John McCain
U.S. Senator ~ Arizona
(http://www.mccain.senate.gov/public/index.cfm/home)

Press Releases (https://www.mccain.senate.gov/public/index.cfm/press-releases)

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Jan 29 2017

STATEMENT BY SENATORS McCAIN & GRAHAM ON EXECUTIVE ORDER ON IMMIGRATION (https://www.mccain.senate.gov/public/index.cfm/press-releases?ID=587F2A2D-8A47-48F7-9045-CF30F0A77889)

Washington, D.C.—U.S. Senators John McCain (R-AZ) and Lindsey Graham (R-SC) released the following statement today on the President's executive order on immigration:

"Our government has a responsibility to defend our borders, but we must do so in a way that makes us safer and upholds all that is decent and exceptional about our nation.

"It is clear from the confusion at our airports across the nation that President Trump's executive order was not properly vetted. We are particularly concerned by reports that this order went into effect with little to no consultation with the Departments of State, Defense, Justice, and Homeland Security.

[EXHIBIT 7]

"Such a hasty process risks harmful results. We should not stop green-card holders from returning to the country they call home. We should not stop those who have served as interpreters for our military and diplomats from seeking refuge in the country they risked their lives to help. And we should not turn our backs on those refugees who have been shown through extensive vetting to pose no demonstrable threat to our nation, and who have suffered unspeakable horrors, most of them women and children.

"Ultimately, we fear this executive order will become a self-inflicted wound in the fight against terrorism. At this very moment, American troops are fighting side-by-side with our Iraqi partners to defeat ISIL. But this executive order bans Iraqi pilots from coming to military bases in Arizona to fight our common enemies. Our most important allies in the fight against ISIL are the vast majority of Muslims who reject its apocalyptic ideology of hatred. This executive order sends a signal, intended or not, that America does not want Muslims coming into our country. That is why we fear this executive order may do more to help terrorist recruitment than improve our security."

# # #

Permalink: https://wwww.mccain.senate.gov/public/index.cfm/2017/1/statement-by-senators-mccain-graham-on-executive-order-on-immigration (https://www.mccain.senate.gov/public/index.cfm/2017/1/statement-by-senators-mccain-graham-on-executive-order-on-immigration)

Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States

Scope Note: This paper was prepared at the request of the DHS Acting Under Secretary for Intelligence and Analysis. It assesses the international terrorist threat to the United States and worldwide by citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. Citizens of these seven countries were impacted by Section 3 of Executive Order (E.O.) 13769 "Protecting the Nation from Foreign Terrorist Entry into the United States." The assessment relies on unclassified information from Department of Justice press releases on terrorism-related convictions and terrorist attack perpetrators killed in the act, Department of State visa statistics, the 2016 Worldwide Threat Assessment of the US Intelligence Community, and the Department of State Country Reports on Terrorism 2015. This paper does not assess the threat of domestic terrorism.

Key Findings

- DHS I&A assesses that country of citizenship is unlikely to be a reliable indicator of potential terrorist activity. Since the beginning of the Syrian conflict in March 2011, the foreign-born primarily US-based individuals who were inspired by a foreign terrorist organization to participate in terrorism-related activity were citizens of 26 different countries, with no one country representing more than 13.5 percent of the foreign-born
- total.

[EXHIBIT 8]

- Relatively few citizens of the seven countries impacted by E.O. 13769, compared to neighboring countries, maintain access to the United States.
- Terrorist groups in Iraq, Syria, and Yemen pose a threat of attacks in the United States while groups in Iran, Libya, Somalia, and Sudan remain regionally focused.

Citizens of Countries Affected by E.O. 13769 Rarely Implicated in US-Based Terrorism

DHS I&A assesses that country of citizenship is unlikely to be a reliable indicator of potential terrorist activity. Since the beginning of the Syrian conflict in March 2011, at least 82 primarily US-based individuals, who died in the pursuit of or were convicted of any terrorism-related federal offense inspired by a foreign terrorist organization, according to a DHS study of Department of Justice press releases on convictions and terrorist attack perpetrators killed in the act.[1†] Of the 82 individuals we identified, slightly more than half were native-born United States citizens. Of the foreign-born individuals, they came from 26 different countries, with no one country representing more than 13.5 percent of the foreign-born total.

- The top seven origin countries of the foreign born individuals are: Pakistan (5), Somalia (3),

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† For the purposes of this paper, we limited our data to individuals prosecuted under 18 U.S.C. Chapter 133B in support of our inspired by a Foreign Terrorist Organization (FTO). We excluded traveling or attempting to travel overseas to join a FTO and activities unrelated to FTOs, to include purely domestic terrorism.

and Bangladesh, Cuba, Ethiopia, Iraq, and Uzbekistan (2).

- Of the seven countries impacted by E.O. 13769 that are not listed above, Iran, Sudan, and Yemen had 1 each, and there were no individuals from Syria.

Limited Access to the United States by Citizens of Impacted Countries

Relatively few citizens of the seven countries impacted by E.O. 13769, compared to neighboring countries, maintain access to the United States. None of the seven countries account for more than 7 percent of the US visas granted in their region—the Middle East and North Africa or Sub-Saharan Africa—in Fiscal Year 2015, according to publicly available Fiscal Year 2015 visa issuance data from the Department of State.[23†]

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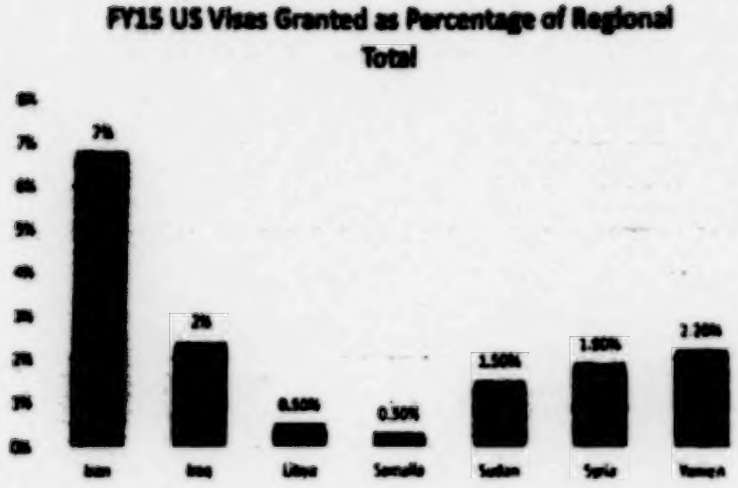
† Fiscal Year 2015 is the most recent year we have visa issuance data for both immigrant and non-immigrant visas. A-1, A-2, A-3, C-2, NATO, G-1, G-2, G-3, and G-3 non-immigrant visas were excluded from these calculations to be consistent with section 3(c) in E.O. 13769.



Few of the Impacted Countries Have Terrorist Groups that Threaten the West

Terrorist groups in Iraq, Syria, and Yemen pose a threat of attacks in the United States, while groups in Iran, Libya, Somalia, and Sudan are regionally focused, according to the 2016 Worldwide Threat Assessment of the US Intelligence Community and the Department of State Country Reports on Terrorism 2015.

Iran—Designated as a State Sponsor of Terrorism in 1984, Iran continued its terrorist-related activity in 2015, including support for Hizballah, Palestinian terrorist groups in Gaza, and various groups in Iraq and throughout the Middle East, according to the Country Reports on Terrorism 2015.[4] Iran used the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to implement foreign policy goals, provide cover for intel-

ligence operations, and create instability in the Middle East. The IRGC-QF is Iran's primary mechanism for cultivating and supporting terrorists abroad.

Iraq and Syria—The Islamic State of Iraq and the Levant (ISIL) has become the preeminent terrorist threat because of its self-described caliphate in Syria and Iraq, its branches and emerging branches in other countries, and its increasing ability to direct and inspire attacks against a wide range of targets around the world, according to the 2016 Worldwide Threat Assessment.[5] ISIL's narrative support jihadist recruiting, attracts others to travel to Iraq and Syria, draws individuals and groups to declare allegiance to ISIL, and justifies attacks across the globe.

Lybia—Libya has been locked in civil war between two rival governments and affiliated armed groups, according to the 2016 Worldwide Threat Assessment.[6] The 17 December 2015 signing of a UN-brokered agreement to form a Government of National Accord resulted from a year-long political dialogue that sought to end the ongoing civil war and reconcile Libya's rival governments. Extremists and terrorists have exploited the security vacuum to plan and launch attacks in Libya and throughout the region.

Somalia—In 2015, al-Shabaab continued to commit deadly attacks in Somalia, seeking to reverse progress made by the Federal Government of Somalia and weaken the political will of the African Union Mission in Somalia troop contributing countries, according to the Country Reports on Terrorism 2015.[7]

Sudan—Sudan was designated as a State Sponsor of Terrorism in 1993 due to concerns about support to international terrorist groups, according to the Country Reports on Terrorism 2015.[8] In 2014, members of Hamas were allowed to raise funds, travel, and live in Sudan. However, in 2015 the use of Sudan by Palestinian designated terrorist groups appeared to have declined. The last known shipment was interdicted by Israel in 2014.

Yemen—Al-Qa'ida in the Arabian Peninsula remained a significant threat to Yemen, the region, and to the United States in 2015, as efforts to counter the group were hampered by the ongoing conflict in that country, according to the Country Reports on Terrorism 2015.[9] The Islamic State of Iraq and the Levant in Yemen also exploited the political and security vacuum to strengthen its foothold inside the country.

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[1] DHS I&A; DHS I&A Terrorism-Related Activities Study; 16 FEB 17; DOI 01 MAR 11-31 JAN 17; DHS I&A Terrorism-Related Activities Study

[2] https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIV.pdf

[3] https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY15%20NIV%20Detail%20Table.xls

[4] https://www.state.gov/j/ct/rls/crt/2015/257520.htm

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INTELLIGENCE ASSESSMENT

(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

1 March 2017

Homeland Security

Office of Intelligence and Analysis

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[EXHIBIT 9]

1 March 2017

(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

(U//FOUO) Prepared by the Office of Intelligence and Analysis (I&A). Coordinated with CBP, the Department of State, ICE, NCTC, and USCIS.

(U) Scope

(U//FOUO) This *Assessment* examines the immigration history and radicalization of 88 foreign-born, US-based persons who participated in a terrorism-related activity inspired by at least one named foreign terrorist organization (FTO).* All examined individuals primarily resided in the United States either at the time of their involvement in a terrorism-related activity or prior to their travel to join an FTO. The list of individuals included in this study was derived from academic and government sources, including a Department of Justice (DOJ) list of unsealed international terrorism and terrorism-related cases. The terrorism-related activities these individuals engaged in were identified in US Government sources or reliable media reporting. These activities include conducting or attempting to conduct an attack in the United States, traveling or attempting to travel from the United States to join

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* (U//FOUO) OHS defines radicalization as the process through which an individual changes from a nonviolent belief system to a belief system that includes the willingness to actively advocate, facilitate , or use unlawful violence as a method co effect societal or political change.

an FTO overseas, and providing funds, goods, or logistical assistance to support an FTO. All individuals examined in our study were indicted or killed between March 2011—the start of the Syrian conflict—and December 2016. Individuals who were minors at the time of their indictment or death were not included. Our review did not consider classified or non-disseminated investigative information.

(U//FOUO) This Assessment identifies several factors, some of which are constitutionally protected activity, which we assess contributed to the radicalization of foreign-born, US-based violent extremists mentioned in this report. None of these factors should be viewed as definitive indicators of radicalization to violence absent corroborative information revealing a link to violence or terrorism. This Assessment is intended to inform federal. state, local, tribal, and territorial counterterrorism, law enforcement, and countering violent extremism (CVE) officials, as well as immigrant screening and vetting officials on trends of foreign-born individuals engaged in terrorism activity in the Homeland. It also provides an overview of opportunities to prevent and detect future violent extremist radicalization. The information cutoff date is 31 December 2016.

(U) Key Judgments

(U//FOUO) We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns. We base this

assessment on our findings that nearly half of the foreign-born, US-based violent extremists examined in our dataset were less than 16 years old when they entered the country and that the majority of foreign-born individuals resided in the United States for more than 10 years before their indictment or death. A separate DHS study that found recent foreign-born US violent extremists began radicalizing, on average, 13 years after their entry to the United States further supports our assessment.

(U//FOUO) We assess nearly all parents who entered the country with minor-age children likely did not espouse a violent extremist ideology at the time they entered or at any time since, suggesting these foreign-born individuals were likely not radicalized by their parents before or after their arrival in the Homeland. We base this judgment on their admissions to the United States by screening and vetting agencies who review all available derogatory information, our review of press interviews of parents after their child was arrested or killed, and the lack of arrests of the parents since their entry.

(U//FOUO) We assess that the integration and mentoring services provided by federal, state or private sector entities to refugees and asylees offer an opportunity to help foreign-born US residents adjust to their new communities and raise their awareness of and resistance to violent extremist narratives and recruiters, and likely increase their resilience to radicalization.

(U//FOUO) The experiences and grievances we assessed as common within these individuals present opportunities for CVE programs focused on integration and men-

torship. Such programs could address adolescent immigrants' feelings of isolation, anger, and depression caused by immigration experiences—which could in turn reduce the vulnerability of FTOs to exploit these feelings for recruitment. Program administrators would be positioned to assist adolescents if the administrators are made aware of common radicalization vulnerabilities and behavioral indicators, as well as effective counter-narratives to challenge FTO messaging.

(U//FOUO) Most Foreign-born, US-based Violent Extremists Likely Radicalized after Entering Homeland

(U//FOUO) We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns. We base this assessment on our findings that nearly half of the foreign-born, US-based violent extremists examined in our dataset were younger than 16 years old when they entered the country and that the majority of foreign-born individuals resided in the United States for more than 10 years before their indictment or death. A previous DHS study which found recent foreign-born US violent extremists began radicalizing, on average, 13 years after their entry to the United States further supports our assessment.*

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* (U//FOUO) For more information, please see I&A *Intelligence* Assessment "Commonalities in HVE Radicalization to Violence Provide Prevention Opportunities," published 10 February 2017. Some of the numbers cited in this previous paper slightly differ due to scoping differences.

- (U//FOUO) Miguel Diaz[USPER], who arrived in the United States from Cuba in 1989, likely first displayed signs of radicalization in 2015—26 years after his entry—by posting articles related to the self-proclaimed Islamic State of Iraq and ash-Sham (ISIS) and a picture of himself posing with a firearm on Facebook, according to a DOJ criminal complaint and DHS immigration records.[1,2] Diaz later discussed conducting sniper attacks and scratching "ISIS" into shell casings. He was arrested in April 2015 and subsequently pleaded guilty to being a felon in possession of a firearm. In July 2015, Diaz was sentenced to 10 years in prison followed by three years of supervised release.[3]
- (U//FOUO) Mohimanul Bhuiya[USPER] entered the United States from Bangladesh when he was 11 months old and resided in the country for 24 years before his arrest in 2014 for successfully traveling to Syria and joining ISIS, according to DHS immigration records and reliable press reporting.[4,5] He was likely radicalized by June 2014, when FBI learned that he may have had plans to travel to Syria, according to reliable press reporting.[6,7] In November 2014, he pleaded guilty to providing material support and receiving military training from a FTO.[8]
- (U//FOUO) A separate DHS examination of the radicalization of the seven foreign-born, US-based violent extremists who attempted or succeeded in conducting attacks between January 2015 and December 2016 found that they typically entered the United States 15 years before their arrest or attack, and often only began radicalizing two years

before they attempted their attack. This suggests that, on average, 13 years passed between the time these foreign-born, US-based violent extremists entered the United States and subsequently began to radicalize.

(U//FOUO) Countries of Birth of foreign-born, US-based Violent Extremists

(U//FOUO) The 88 foreign-born, US-based violent extremists that we examined were born in 33 different countries, none of which holds a majority. Many of the individuals born in these countries were associates of each other, lived in the same area in the United States, and participated in a terrorism-related incident as a group. Four countries—Somalia, Uzbekistan, Bosnia, and Pakistan—comprised the country of birth of about 40 percent of the individuals in our dataset. Some of the individuals in our dataset may have immigrated to the United States from a country other than their place of birth. For example, some of the individuals in our dataset resided in refugee camps in a country other than their birth country prior to immigrating to the United States.

- *(U//FOUO) At least eight of the 13 individuals in our dataset who were born in Somalia were associates of each other and provided material support to ISIS as a group, according to DOJ criminal complaints.*[9,10]
- *(U//FOUO) In 2012, two individuals born in Uzbekistan were arrested for providing material support to the Islamic Jihad Union, according to DOJ criminal complaints.*[11,12] *Separately, four*

Uzbekistan-born individuals were arrested in 2015 for providing material support to ISIS, according to a DOJ criminal complaint and superseding indictment.[13,14] *These two groups comprised six of the nine individuals in our dataset who were born in Uzbekistan.*

- *(U//FOUO) All seven individuals born in Bosnia were associates of each other. Six were arrested in 2015 for providing material support to ISIS and one died in 2014 after successfully joining ISIS in Syria, according to DOJ criminal complaints and a press report.*[15,16]
- *(U//FOUO) Two of the seven violent extremists in our dataset who were born in Pakistan were brothers who plotted together to provide material support to al-Qa'ida in the Arabian Peninsula (AQAP), according to a DOJ indictment.*[17]

(U//FOUO) We assess nearly all parents who entered the country with minor-age children likely did not espouse a violent extremist ideology at the time they entered or at any time since, suggesting these foreign-born individuals were likely not radicalized by their parents before or after their arrival in the Homeland. We base this judgment on their admissions to the United States by screening and vetting agencies who review all available derogatory information, our review of press interviews of parents after their child was arrested or killed, and the lack of arrests of the parents since their entry.

- (U//FOUO) Two months before Somali immigrant Abdirizak Warsame[USPER] was arrested for conspiring

to provide material support to ISIS, his mother lectured other parents about the importance of talking with their children about risks stemming from adhering to a violent extremist ideology and the need to work with the FBI, according to press reporting.[18] Warsame was sentenced to 30 months in prison in November 2016 because of his attempt to travel to Syria to join ISIS, according to a press report.[19]

- (U//FOUO) Harlem Suarez's[USPER] family was surprised by his arrest for plotting an attack in support of ISIS in 2015, according to a press report.[20] The family described Suarez, who was born in Cuba, as curious and unable to hurt anything, according to the same report.[21] Suarez is currently awaiting trial, according to another press report.[22]
- (U//FOUO) Jose Pimentel's[USPER] mother publicly apologized to the City of New York after his arrest in 2011, saying she was disappointed with her son's actions, according to multiple press reports.[23,24,25] Pimentel—who immigrated from the Dominican Republic with his family when he was five—was sentenced to 16 years in prison after pleading guilty in February 2014 to terrorism charges related to plotting to conduct an attack in the Homeland, according to a separate press report.[26]

(U//FOUO) Similar Radicalization Factors among Native- and Foreign-born US Violent Extremists

(U//FOUO) Our review of 116 native-born US violent extremists, who were publicly identified as having been arrested or killed between March 2011 and Decem-

ber 2016, showed that many had similar experiences and grievances to the 88 foreign-born violent extremists we examined. We assess that these experiences and grievances probably in part contributed to the radicalization of some native- and foreign-born, US-based violent extremists and included perceived injustices against Muslims in the Homeland and abroad because of US policies, feelings of anger and isolation, and witnessing violence as a child. The lack of extensive open source information detailing some of these US violent extremists' radicalization histories prevented us from identifying motivating factors for all individuals examined in our dataset.

- *(U//FOUO) Native-born brothers Nader Saadeh[USPER] and Alaa Saadeh[USPER]—who both pleaded guilty after their arrest in 2015 for providing material support to ISIS—believed the United States oppressed its own people and failed to protect Muslims. according to DOJ criminal complaints.[27,28] Similarly, Ibrahim Mohammad[USPER], born in the UAE and arrested in 2015 for providing material support to AQAP, believed the United States was actively at war with Islam, according another DOJ criminal complaint.[29]*
- *(U//FOUO) Native-born Josh Van Haften[USPER], who is awaiting his trial for attempting to travel overseas to join ISIS, became isolated from his peers after a sexual assault required him to register as a sex offender, according to press reporting.[30] He was told to leave his housing because he was a sex offender, and he was never able to have a romantic relationship, according to a press interview with*

Van Haften's mother and her partner.[31] *The FBI assesses isolation to be one of many factors in Van Haften's radicalization, but not the primary one. Similarly, the now-deceased foreign-born former editor of AQAP's Inspire magazine, Samir Khan, and now-deceased ISIS foreign fighter Abdullah Ramo Pazara felt isolated or different from their communities and peers, according to multiple press reports.*[32,33,34]

- *(U//FOUO) At least five foreign-born US violent extremists were exposed to violence or substance abuse as children, according to a review of available press reporting.*[35-39] *We judge, however, there are likely additional individuals included in our dataset who were also exposed to violence during their childhood, based on our finding that 41 foreign-born US violent extremists in our dataset entered the United States as a refugee, asylee, or child of a refugee or asylee.*

(U//FOUO) CVE Opportunities to Prevent Radicalization of Foreign-born, US-based Individuals

(U//FOUO) We assess that the integration and mentoring services provided by federal, state, and private sector entities to refugees and asylees offer an opportunity to help foreign-born US residents adjust to their new communities and raise their awareness of and resistance to violent extremist narratives and recruiters, and likely increase their resistance to radicalization. Immigrants not entering the United States as refugees or asylees must prove their ability to provide basic needs for themselves before arriving in the

United States, and thus they would not be eligible to receive many of these healthcare, housing, employment, and education services; however, there are many programs available to all immigrants to assist with integration into US society.

- (U) There are a variety of federal, state, local, and nongovernmental programs aimed at helping refugees and asylees integrate into US society by addressing their basic healthcare, housing, employment, and education needs.[40] Additionally, USCIS, through its Citizenship and Integration Grant Program, as of September 2016 awarded $63 million through 308 competitive grants in 37 states to help immigrants prepare and apply for US citizenship, according to USCIS.[41]
- (U) Many nonprofit organizations engage with immigrant communities, including a Georgia-based nonprofit that serves the cultural, psychological, and social-economic needs of refugees and immigrants in Atlanta, according to their website.[42]

(U//FOUO) The experiences and grievances we assessed as common within these individuals present opportunities for CVE programs focused on integration and mentorship. Such programs could address adolescent immigrants' feelings of isolation, anger, and depression caused by immigration experiences—which could in turn reduce the ability of FTOs to exploit these feelings for recruitment. Program administrators would be positioned to assist adolescents if the administrators are made aware of common radicalization vulnerabilities and behavioral indicators, as well as effective counter-narratives to challenge FTO messaging.

- (U//FOUO) Guled Omar[USPER], who was sentenced in 2016 for attempting travel overseas to join ISIS, claimed in a December 2016 press interview that after his older brother traveled to Somalia in 2007 to join al-Shabaab, he was shunned and isolated from the Somali-American community in Minneapolis, which led to his depression, drug use, and taunting by peers.[43]
- (U) Successful programs for adolescent immigrants could include convening youth from varying cultural backgrounds to promote cultural understanding and providing opportunities to counter anti-immigrant attitudes in mainstream culture, according to research published by a State University of New York at Albany[USPER] program called Voices for Change: Immigrant Women and State Policy.[44] Separately, the Department of Health and Human Services' Child Welfare Information Gateway offers online resources for immigrant youth, including a guide on living in America, educational and safety resources for parents, and a handbook for raising children in a new country.[45]

(U//FOUO) We also judge that open discussions with community and religious centers about overseas conflicts and ways that violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individuals who are seeking answers to their questions from relying exclusively on research conducted online, which is often dominated by FTO messaging that offers only a violent extremist perspective.

» (U//FOUO) Some individuals in our dataset who became interested in conflict zones or their religion sought to educate themselves on the Internet—where they encountered videos and literature espousing violent extremist ideology—rather than their local religious or community leaders, according to press reporting.[4647] Somali-Americans Abdi Nur[USPER] and Guled Omar—who have since been indicted for attempting to provide material support to ISIS—were asked to leave their respective mosques because of their expressions of violent extremist beliefs, which, in effect, pushed their research underground, where they turned to the Internet and had their nascent violent extremist views reinforced, according to a press report.[48] Abdi Nur was indicted on conspiracy charges for providing material support to ISIS in 2014, according to a DOJ press release.[49]

» (U//FOUO) Abdizirak Warsame stated in his court appearance that he was always listening to one side, referring to the "radical" messages he saw online, according co a press report. Warsame claimed that at the time he did not realize innocent people were being killed, according to the same report, which was likely a reference to terrorists' targeting of civilians.[50]

...reign-born, US-based Violent Extremists Probably Radicalized After Entering the Homeland

...of the investigative history and radicalization activities of 88 foreign-born, US-based ... indicted or killed as a result of their participation in a terrorism-related activity ... foreign terrorist organization between March 2011 and December 2016. We based this ... assessment on court documents, publicly available arrest documents and reliable press reporting ... native-born violent extremists in our dataset entered the United States when they were ... a majority remained in the United States for over ten years before their radicalization ... foreign-born, US-based violent extremists likely radicalized after entering the ...

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(U) Source Summary Statement

(U//FOUO) This Assessment is based primarily on I&A's review of DHS immigration and travel records and publicly available court documents as well as relevant reliable press reporting. The scope of our study did not include consideration of non-disseminated investigative information.

(U//FOUO) I&A has ***moderate confidence*** *that most foreign-born US violent extremists likely radicalize several years after their entry to the United States, based on a review of court documents and press reporting from which we determined the first known sign of radicalization to violence among recent US violent extremists and a body of USCIS data from which we determined the length of time the individuals examined in our current dataset spent in the United States before their indictment or death. We note that there are challenges in determining the exact date that radicalization began, which is often a personal and individualized process that is difficult to observe. Additional reporting on the online activities of the US violent extremists, as well as information from the US violent extremists themselves or their family and friends about possible indicators of their loved ones' radicalization would further strengthen our confidence in this assessment. Our assessment is further supported by our finding that nearly half of the foreign-born individuals in our dataset entered the United States when they were younger than 16 years*

old, an age group that is typically younger than the age most violent extremists begin radicalizing.

(U//FOUO) We have ***moderate confidence*** *in our assessment that nearly all parents who entered the country with these foreign-born, US-based violent extremists likely did not espouse a violent extremist ideology or exhibit any violent radicalization or mobilization indicators at the time they entered or since. Our assessment is based on a qualitative review of reliable press reporting describing the family life and parents of the individuals in our dataset. Additional information about the parents of these individuals—which is likely contained in immigration screening and vetting interview transcripts related to these individuals and their parents, which we lacked access to—would strengthen our confidence in this assessment.*

(U//FOUO) We have ***moderate confidence*** *that provision of services to refugees and asylees and programs tailored to adolescents offer opportunities to provide CVE programs to address radicalization factors possibly relevant to foreign-born US residents. Our assessment is based on a review of services provided to refugees and asylum seekers and current programs focused on immigrant youth, which, collectively, can address many of the common grievances and experiences of the foreign-born individuals in our dataset*

(U//FOUO) We have ***moderate confidence*** *that open discussions with community and religious centers about overseas conflicts and ways violent extremists may use religion to justify their actions would likely*

help dissuade some foreign-born, US-based individuals from relying exclusively on Internet research. Our assessment is based on an analysis of current CVE programs and grievances cited by the individuals in our dataset to determine whether these programs would likely address the radicalization factors of these individuals. The inherent challenges involved in proving that CVE efforts have successfully countered radicalization of violent extremists or possible radicalization of vulnerable individuals limit our confidence in this assessment.

[redacted]

(U) To report suspicious activity, law enforcement, Fire-EMS, private security personnel, and emergency managers should follow established protocols; all other personnel should call 911 or contact local law enforcement. Suspicious activity reports (SARs) will be forwarded to the appropriate fusion center and FBI Joint Terrorism Task Force for further action. For more information on the Nationwide SAR Initiative, visit http://nsi.ncirc.gov/resources.aspx.

(U) Tracked by: HSEC-8.1, HSEC-8.2, HSEC-8.3, HSEC-8.5

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[1] (U); United States District Court, Southern District of Florida; "United States of America v. Miguel Moran Diaz"; 06 APR 2015.

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tion; Extracted information is UNCLASSIFIED; Overall document classification is UNCLASSIFIED.

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[6] (U); Adam Goldman; *The Washington Post;* "'I am fed up with this evil': How an American went from Ivy League student to disillusioned ISIS fighter"; 30 JUN 2016; https://www.washingtonpost.com/world/national-security/i-am-fed-up-with-this-evil-how-an-american-went-from-ivy-league-student-to-disillusioned-isis-fighter/2016/06/29/155e777e-3e07-11e6-80bc-d06711fd2125_story.html?utm_term=.f3268b20b17f#comments; accessed on 13 DEC 2016.

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[9] (U); United States District Court, the District of Minnesota; "United States of America v. Mohamed Abdihamid Farah, Adnan Abdihamid Farah, Abdurahman Yasin Daud, Zacharia Yusuf Abdurahman, Hanad Mustafe Musse and Guled Ali Omar"; 18 APR 2015.

[10] (U); US District Court, District of Minnesota; "United States of American v. Abdullahi Yusuf, Abdi Nur"; Criminal Complaint; 24 NOV 2014.

[11] (U); United States District Court, District of Colorado; "United States of America v. Bakhtiyor Jumaev"; Criminal Complaint; 14 MAR 2012.

[12] (U) ; United States District Court, District of Colorado; "United States of America v. Jamshid Muhtorov"; 19 JAN 2012.

[13] (U); United States District Court, Eastern District of New York; "United States of America v. Abdurasul Hasanovich Juraboev, Akhror Saidakhmetov, and Abror Habibov"; 24 FEB 2015.

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[28] (U); United States District Court, District of New Jersey; "United States of America v. Nader Saadeh"; 01 AUG 2015.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil Action No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; ELAINE DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF DEIRDRE MARIE-IHA IN SUPPORT OF PLAINTIFFS' (1) MOTION FOR TEMPORARY RESTRAINING ORDER, AND (2) MOTION FOR LEAVE FOR DOE PLAINTIFFS TO PROCEED UNDER PSEUDONYM, AND FOR *IN CAMERA* REVIEW OF DOE PLAINTIFFS' AND DOE DECLARANTS' SIGNED STATEMENTS; EXHIBITS A-L IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER; CERTIFICATE OF SERVICE

DECLARATION OF DEIRDRE MARIE-IHA IN SUPPORT OF PLAINTIFFS' (1) MOTION FOR TEMPORARY RESTRAINING ORDER, AND (2) MOTION FOR LEAVE FOR DOE PLAINTIFFS TO PROCEED UNDER PSEUDONYM, AND FOR *IN CAMERA* REVIEW OF DOE PLAINTIFFS' AND DOE DECLARANTS' SIGNED STATEMENTS

I, DEIRDRE MARIE-IHA, hereby state and declare as follows:

1. I am a Deputy Attorney General for the State of Hawaii. I have personal knowledge of and am competent to testify to the truth of the matters stated herein. This Declaration is submitted in support of Plaintiffs' (1) Motion for Temporary Restraining Order (the "TRO Motion"), and (2) Motion for Leave for Doe Plaintiffs to Proceed Under Pseudonym, and for *In Camera* Review of Doe Plaintiffs' and Doe Declarants' Signed Statements (the "Confidentiality Motion"), both filed concurrently herewith.

2. Attached as Exhibit A is a true and correct copy of a declaration submitted by declarant John Doe 1, a naturalized U.S. citizen who resides in Hawaii and wishes to join this action as a Plaintiff. He originally is from one of the countries targeted by Defendant Donald J. Trump's September 24, 2017 "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats" ("EO-3"). Exhibit A explains how declarant John Doe 1 has been injured by EO-3, as well as his reasons for fearing severe retaliation in the event that his name is disclosed to the public, Defendants, or their counsel. I

spoke personally with John Doe 1 regarding the need to protect his identity and his fear of public reprisals, and his concern that, should his identity be released, negative consequences might result for the immigration processes currently underway for his family. These concerns are so deep-seated that he would not have agreed to submit the declaration if we had not acted to protect his identity. An unredacted, signed copy of Exhibit A bearing declarant John Doe 1's name, which is highly confidential information, is being submitted to the Court for *in camera* review pursuant to Local Rule 10.2 and Plaintiffs' concurrently-filed Confidentiality Motion. Aside from its redaction of declarant John Doe 1's name, the publicly-filed copy of Exhibit A is identical to the unredacted, signed copy of Exhibit A being submitted to the Court for *in camera* review.

3. Attached as Exhibit B is a true and correct copy of a declaration submitted by declarant John Doe 2, a lawful permanent resident of the United States who resides in Hawaii and wishes to join this action as a Plaintiff. He originally is from one of the countries targeted by EO-3. Exhibit B explains how declarant John Doe 2 has been injured by EO-3, as well as his reasons for fearing severe retaliation in the event that his name is disclosed to the public, Defendants, or their counsel. I spoke personally with John Doe 2 regarding the need to protect his identity and his fear of public reprisals, and his concern that, should his identity be released, negative consequences might result for the immigration processes currently underway for his family. These concerns are so deep-seated that he would not have agreed to submit the declaration if we

had not acted to protect his identity. An unredacted, signed copy of Exhibit B bearing declarant John Doe 2's name, which is highly confidential information, is being submitted to the Court for *in camera* review pursuant to Local Rule 10.2 and Plaintiffs' concurrently-filed Confidentiality Motion. Aside from its redaction of declarant John Doe 2's name, the publicly-filed copy of Exhibit B is identical to the unredacted, signed copy of Exhibit B being submitted to the Court for *in camera* review.

4. Attached as Exhibit C is a true and correct copy of a declaration submitted by declarant Jane Doe 3, a naturalized American citizen residing in the United States. She originally is from one of the countries targeted by EO-3. Exhibit C explains how declarant Jane Doe 3 has been injured by EO-3, as well as her reasons for fearing severe retaliation in the event that her identity is disclosed to the public, Defendants, or their counsel. I spoke personally with Jane Doe 3 regarding the need to protect her identity and her fear of public reprisals, and her concern that, should her identity be released, negative consequences might result for the immigration processes currently underway for her family. These concerns are so deep-seated that she would not have agreed to submit the declaration if we had not acted to protect her identity. Furthermore, the relevant community is so small that disclosing the location where the declaration was signed would effectively disclose Jane Doe 3's identity. An unredacted, signed copy of Exhibit C bearing declarant Jane Doe 3's name and the location where her declaration was signed, which are highly confidential, is being

submitted to the Court for *in camera* review pursuant to Local Rule 10.2 and Plaintiffs' concurrently-filed Confidentiality Motion. Aside from its redaction of declarant Jane Doe 3's name and the location where her declaration was signed, the publicly-filed copy of Exhibit C is identical to the unredacted, signed copy of Exhibit C being submitted to the Court for *in camera* review.

5. Attached as Exhibit D is a true and correct copy of a declaration submitted by a foreign national, declarant John Doe 4, residing in the United States. He originally is from one of the countries targeted by EO-3. Exhibit D explains how declarant John Doe 4 has been injured by EO-3, as well as his reasons for fearing severe retaliation in the event that his identity is disclosed to the public, Defendants, or their counsel. I spoke personally with John Doe 4 regarding the need to protect his identity and his fear of public reprisals, and his concern that, should his identity be released, negative consequences might result for the immigration processes currently underway for his family. These concerns are so deep-seated that he would not have agreed to submit the declaration if we had not acted to protect his identity. Furthermore, the relevant community is so small that disclosing the location where the declaration was signed would effectively disclose John Doe 4's identity. An unredacted, signed copy of Exhibit D bearing declarant John Doe 4's name and the location where his declaration was signed, which are highly confidential, is being submitted to the Court for *in camera* review pursuant to Local Rule 10.2 and Plaintiffs' concurrently-filed Confidentiality

Motion. Aside from its redaction of declarant John Doe 4's name and the location where his declaration was signed, the publicly-filed copy of Exhibit D is identical to the unredacted, signed copy of Exhibit D being submitted to the Court for *in camera* review.

6. Attached as Exhibit E is a true and correct copy of a declaration submitted by a foreign national, declarant John Doe 5, residing in the United States. He originally is from one of the countries targeted by EO-3. Exhibit E explains how declarant John Doe 5 has been injured by EO-3, as well as his reasons for fearing severe retaliation in the event that his name is disclosed to the public, Defendants, or their counsel. I spoke personally with John Doe 5 regarding the need to protect his identity and his fear of public reprisals. This concern is so deep-seated that he would not have agreed to submit the declaration if we had not acted to protect his identity. An unredacted, signed copy of Exhibit E bearing declarant John Doe 5's name, which is highly confidential information, is being submitted to the Court for *in camera* review pursuant to Local Rule 10.2 and Plaintiffs' concurrently-filed Confidentiality Motion. Aside from its redaction of declarant John Doe 5's name, the publicly-filed copy of Exhibit E is identical to the unredacted, signed copy of Exhibit E being submitted to the Court for *in camera* review.

7. Attached as Exhibit F is a true and correct copy of the Declaration of Donald O. Straney, Vice President for Academic Planning and Policy at the University of Hawaii system (the "University"), addressing the impacts of EO-3 on the University of Hawaii community, including with respect to limiting

the travel of the University's faculty, staff, and students; hindering the international exchange of ideas and research partnerships at the University; reducing the diversity of the University's faculty, staff, and students; negatively impacting the University's applicant pool; and undercutting the welcoming, diversity-embracing values of the University and State of Hawaii.

8. Attached as Exhibit G is a true and correct copy of the Declaration of Gaye Chan, Chair of the Department of Art and Art History (the "Department") at the University of Hawaii at Manoa, addressing the impacts of EO-3 on the diversity of the Department's faculty, staff, and student bodies, the Department's ability to offer exposure to international and varied art, and the Department's capacity to recruit and host nationals from the countries targeted by EO-3.

9. Attached as Exhibit H is a true and correct copy of the Declaration of Nandita Sharma, an Associate Professor in the Department of Sociology at the University of Hawaii at Manoa and Director of the University's International Cultural Studies Program, addressing the negative impacts of EO-3 on the University's scholastic development and ability to recruit and host nationals from the countries targeted by EO-3.

10. Attached as Exhibit I is a true and correct copy of the Declaration of Ismail Elshikh, PhD, a U.S. citizen who resides in Hawaii and is a Plaintiff in this action. He is of Egyptian descent and a community leader, as the Imam of the Muslim Association of Hawaii. He and his family have been personally affected

by EO-3, including with respect to interrupted travel plans and separation from family members abroad.

11. Attached as Exhibit J is a true and correct copy of the Declaration of George Szigeti, President and Chief Executive Officer of the Hawaii Tourism Authority ("HTA"), providing and explaining data maintained by HTA for the last five years with respect to visitor expenditures, total visitor arrivals and mode of transport, and the flow of visitors from Africa and the Middle East.

12. Attached as Exhibit K is a true and correct copy of the Declaration of Luis P. Salaveria, Director of the State of Hawaii Department of Business, Economic Development and Tourism, addressing the impacts of EO-3 on the tourism industry in Hawaii, including with respect to collaborative projects, sister-state relationships, tourism branding, and visa reductions.

13. Attached as Exhibit L is a true and correct copy of the Declaration of Hakim Ouansafi, who has been a resident of the United States for over thirty years and is the Chairman of The Muslim Association of Hawaii, Inc., a nonprofit entity that is the only formal Muslim organization in Hawaii and serves approximately 5,000 Muslims statewide. He has held the position of Chairman of The Muslim Association of Hawaii, Inc. for about fifteen years. His declaration addresses the harassment, threats of violence, delayed travel plans, and religious burdens experienced by members of his organization as a result of EO-3 and its predecessor Executive Orders, as well as the pecuniary and membership harms they have caused The Muslim Association of Hawaii, Inc. as an organization.

14. Exhibits A, B, C, D, and E hereto are submitted in support of Plaintiffs' TRO Motion by five declarants —John Doe 1, John Doe 2, Jane Doe 3, John Doe 4, and John Doe 5 (the "Doe Declarants")—each of whom originally is from one of the countries targeted by EO-3, which is the subject of Plaintiffs' TRO Motion.

15. Following the issuance of EO-3, members of my staff and I spoke with the Doe Declarants, each of whom conveyed grave concern that the disclosure of his or her name would pose a risk of severe retaliation by Defendants; others associated with them, including immigration officials; anti-Muslim members of the public; and/or the governments or residents of the Doe Declarants' countries of origin. The Doe Declarants overwhelmingly expressed fear, frustration, and anger over EO-3, which in numerous instances has split them from their families and jeopardized their own travel arrangements. These individuals are highly apprehensive of retaliation from Defendants, their associates, and members of the public if they participate in this action using their names, particularly based on retaliation that they have seen directed toward Plaintiff Ismail Elshikh on the same basis.

16. The Doe Declarants are filing the substance of their declarations publicly, using pseudonyms of John and Jane Doe, but respectfully request that the Court review their full, signed declarations (disclosing their names and, in some instances, their signing locations) *in camera*, to protect their identities from being shared publicly or with Defendants and their counsel. In the event that the Confidentiality Motion is denied, Plaintiffs

request the opportunity to withdraw Exhibits A, B, C, D, and E hereto in accordance with Local Rule 83.12.

17. Pursuant to Local Rule 10.2, Plaintiffs are submitting full, signed copies of Exhibits A, B, C, D, and E hereto for *in camera* review in sealed envelopes marked to indicate that they should be so reviewed by the Court. The Doe Declarants' names and, in some instances, signing locations have been redacted on the versions of Exhibits A, B, C, D, and E hereto that are being filed publicly via the Court's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Washington, DC, Oct. 10, 2017.

/s/ DEIRDRE MARIE-IHA
DEIRDRE MARIE-IHA

DECLARATION OF JOHN DOE #1

I, JOHN DOE 1, declare as follows:

1. I was originally born in Yemen and am a naturalized U.S. citizen. I have lived in Hawaii for almost 30 years.

2. My wife and all four of my children are U.S. citizens as well, either born in the United States or naturalized. Two of my children are under the age of 14.

3. We are all Muslims, and are members of the mosque where Dr. Ismail Elshikh is imam.

4. One of my daughters is married to a young man from Yemen.

5. They have a young toddler child, who was born in Hawaii and is also a U.S. citizen.

6. My son-in-law fled Yemen to escape the civil war and eventually ended up in Malaysia. My daughter and their child, for the past year and a half, have had to go back and forth between Hawaii and Malaysia just to see him.

7. In September 2015, my daughter filed a petition to allow my son-in-law to immigrate to the United States as the spouse of a U.S. citizen.

9. In late June 2017, my daughter was informed by U.S. Citizenship and Immigration Services that her visa petition on behalf of my son-in-law had successfully passed through the clearance stage. They have now

filed all of the necessary paperwork for his visa application with the National Visa Center ("NVC"). Unless they hear that something more is needed from NVC, the next step is for my son-in-law to then received an interview at a U.S. embassy overseas. My daughter's attorney estimates that, under normal visa processing procedures, my son-in-law would receive a visa within the next three to twelve months.

10. The issuance of the President's proclamation on September 24, 2017, affecting eight countries in total and banning nationals of six predominately Muslim countries (including Yemen) from obtaining immigrant visas, creates great uncertainty as to whether my son-in-law will be able to come to Hawaii.

11. The rest of my family and I miss my son-in-law very much. We want only to be able to live in Hawaii with my daughter, her husband, and our grandchild, as one big family.

12. I have worked hard to build a life in Hawaii and to become a part of this community.

13. If the September 24 proclamation is not enjoined, it will ban my son-in-law from immigrating to the United States and moving to Hawaii simply because he is of Yemeni descent—because he is a national of a Muslim-majority country. The moment its operative provision takes effect, the proclamation will divide up my family across the world, and prevent my wife and me, as well as our other children, from sharing our daily lives with our daughter, son-in-law, and grandchild. We are a close family, and we are proud American citizens and Hawaii residents. It is hard not to

feel that the proclamation, in its entirety, discriminates against us—and imposes a concrete hardship upon our family that our neighbors do not have to experience—simply because we are Muslim and because my daughter has married a Muslim from a Muslim-majority country. By singling our family out for special burdens, the proclamation denigrates us because of our faith and sends a message that Muslims are outsiders and are not welcome in this country. That is unfair, and it is not right.

14. I have asked my attorney to file this declaration anonymously because I am afraid that if I identify myself, it could delay my son-in-law's visa application even further. Our family's ability to reunify is based entirely this process. I am also afraid that I, my wife, or my children may be subject to public reprisals if my name is publicized. Two of my children who live at home are still very young and should not have to face such consequences.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, Oct. 5, 2017.

/s/ **REDACTED**
JOHN DOE 1

DECLARATION OF JOHN DOE #2

I JOHN DOE 2, declare as follows:

1. I was born in Iran.

2. I am a lawful permanent resident of the United States, currently living in Hawai'i.

3. I am a professor at the University of Hawai'i.

4. My mother is an Iranian national living in Iran. She intends to visit me in Hawai'i. She filed an application for a tourist visa several months ago, and that application is currently pending.

5. A few of my close relatives, both Iranian nationals living in Iran, also intend to visit me in Hawai'i. They have pending tourist visa applications which they filed a few months ago, and were recently interviewed. They intend to visit me in Hawai'i as soon as their applications are approved.

6. I understand that on September 24, 2017, President Trump issued a "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats," which restricts entry into the United States by nationals of eight countries, including Iran. I understand that the proclamation blocks the issuance of tourist visas to Iranian nationals entirely, even if they just want to come to visit their family members in America.

[EXHIBIT B]

7. As a result of the President's proclamation, my mother and my close relatives—all Iranian nationals—will not be able to enter the United States.

8. The proclamation separates me from my family. Given that the proclamation's restrictions apply indefinitely, I am less likely to remain in the United States long-term, where I will be deprived of the company of my family.

9. My mother and close relatives are peaceful people who pose no national security threat whatsoever. Still, they are barred from setting foot in the United States. This makes my life extremely difficult as I cannot even host my family members and relatives in my home in the United States because they are nationals of Iran. And that makes me feel like an outcast in my own country, because I am also a national of Iran.

10. I have requested that this declaration be filed anonymously because I am afraid that if I identify myself, it could further delay the visa applications my mother and close relatives have filed. I am also afraid that I may be subject to public reprisals if my name is publicized. I feel I need to take steps to protect my identify because Hawai'i is a small community and with enough information, it would not be difficult to identify me.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawai'i, Oct. 4, 2017.

/s/ **REDACTED**
JOHN DOE 2

DECLARATION OF JANE DOE #3

I, Jane Doe #3, do attest and would competently testify as follows:

1. I was born in Iran.

2. I became a United States citizen in the summer of 2017. While I pursued my degrees in the United States, I was on a student visa. I have lived in the United States for more than 10 years.

3. I am currently a professor of Civil Engineering at a university on the East Coast of the United States. I received my undergraduate and master's degree in Civil Engineering in Iran. I received my PhD and pursued post-doctoral work at two prominent and well-respected American universities.

4. I am aware that President Trump issued an executive order on January 27, 2017, which temporarily banned travel from seven Muslim-majority countries, including Iran. I am also aware that on March 6, 2017, President Trump issued a new executive order that temporarily banned travel from six Muslim-majority countries, including Iran. I also understand that on September 24, 2017, President Trump issued a "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by

which imposes restrictions on entry into the United States by nationals of eight countries, including Iran.

5. In late January 2017, my husband and I were traveling back to the United States from Europe and were detained at an airport in the United States during the implementation of the first travel ban. My husband is also an Iranian national and a lawful permanent resident of the United States. At the time I was a lawful permanent resident, though I subsequently became a citizen. We were eventually released and allowed to return to our home.

6. I understand that we were permitted to enter the United States that day because of litigation in the federal courts regarding the first travel ban.

7. This experience was very unsettling to me and my husband. We both rely on international travel for our work and to visit our families.

8. I was unwilling to ravel out of the United States until I was assured of my ability to travel reliably in and out of the country.

9. In 2016, my husband developed a serious health concern. I needed the support of my family. My mother, who is Iranian, agreed to come to the United States to assist me.

10. My mother went to the U.S. embassy in Dubai and tried to get an emergency appointment for a non-immigrant tourist visa. In the summer

of 2016, we were told that her case was placed under administrative processing. Her application for a visa is still pending and we are still waiting. We received confirmation in the spring of 2017 that the visa application is still in processing, but have hearing nothing since.

11. Meanwhile, the health situation with my husband has continued and I still do not have the support of my family.

12. In the spring of 2017, my father, who is also Iranian, submitted a non-immigrant tourist visa application as well, in the hopes that he could come to the United States to assist me. Like my mother's, his visa application is still pending.

13. Since January 2017, when the first travel ban was implemented, my family and I have faced great uncertainty about whether my family member in Iran will ever be permitted to come visit me in the United States. If the third travel ban is implemented, it will make it difficult if not impossible for my parents to obtain visas to enter the United States. I will be left without the support of my family in my time of need.

14. Since January, and especially since the third travel ban was announced recently, I regularly think about leaving the United States. It is difficult for me to make the trip to Iran frequently, given my work obligations. But now because of the President's travel bans, my close

family members in Iran, including my parents and my sibling, who is also Iranian, cannot come to see me. If the third travel ban is implemented, I will seriously consider looking for work in other countries, perhaps in Europe. I understand that it would be easier for my parents to obtain visas to travel there, so that they would be able to visit me frequently. I otherwise would have no intention of leaving the United States.

15. I am personally aware of the impact the travel bans have had on university communities. In the summer of 2017, there was one Iranian student in particular I tried to recruit to attend my university. Our university offered him admission, financial aid, and assisted with procuring a student visa. He still declined, because of the uncertainty caused by the two travel bans and the visa process and opted to pursue his studies in Canada instead. To my knowledge, the same phenomenon has played out in other universities across the United States. I have also heard from Iranian students that Iranians are now generally more inclined to pursue their studies in Europe or Canada, because of the travel bans. Before the travel bans, universities in the United States were generally the best option for strong applicants.

16. This, in addition to my own experience, has shown me just how damaging implementation of the travel bans has been. It has dramatically

affected my life and my husband's life and threatens to permanently deprive me of the support and assistance of our parents and family.

17. I am submitting this declaration anonymously because I am afraid that if I identify myself, I may be subject to public reprisals. The Iranian community is a small one, as is the university community in which I work.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: **REDACTED** Oct. 5, 2017.

/s/ **REDACTED**
JANE DOE #3

DECLARATION OF JOHN DOE #4

I, John Doe 4, do declare and would competently testify as follows.

1. I was born in Iran in 1985. I am a citizen of Iran.

2. I am a professor of Engineering at a university in the American West.

3. I received my undergraduate and masters degrees in Iran and my PhD from the University of California. I also pursued my post-doc work in California.

4. I have lived in the United States since 2010. I received my green card in October 2015. Before that, I had only a single-entry F-1 student visa.

5. I am aware that President Trump issued an executive order on January 27, 2017, which temporarily banned travel from seven Muslim-majority countries, including Iran. I am also aware that on March 6, 2017, President Trump issued a new executive order that temporarily banned travel from six Muslim-majority countries, including Iran. I also understand that on September 24, 2017, President Trump issued a "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats,"

[EXHIBIT D]

which imposes restrictions on entry into the United States by nationals of eight countries, including Iran.

6. I was personally impacted by the first travel ban. Just after that ban went into effect, there was a conference in Iran in February, 2017, that many in my field were scheduled to attend. The travel was already arranged and organizers had promised to cover the expenses. But none of the professionals in the United States—even the U.S. citizens—went to this event because of the confusion and delay caused by the first order. In fact, a highly respected member of the National Academy of Sciences, himself Iranian, personally advised me not to attend. I did not attend. The risk in travelling outside the United States was too great.

7. My parents both have pending tourist visa applications. Both of them are Iranian. Both were interviewed at the U.S. Embassy in Dubai in the summer of 2017. My mother received an offer for a visa but at the time my father did not. My father's visa was referred for further processing.

8. My parents both have health issues and neither can travel such a long distance alone. Therefore my mother requested that her visa application be held until my father's visa application was completed. At this time we are still waiting for them to be issued tourist visas so they can come to the United States and see me.

9. I came to the United States hoping for a better life. This country has offered me so much and I had always hoped to stay here. I love this country and it is my home.

10. As I look back now, I think about the losses I've faced in my life when I could not travel. When I was a student in the United States, I missed so many critical family events because I had only a single-entry visa and could not risk the uncertainty involved with whether I would be able to return to my studies.

11. I missed so many things with my family: my sister got married in Iran and I could not attend. My father and mother both developed serious health issues and I could not go back to support them. My grandparents died and I could not attend the funeral nor mourn together with my family. All those years I hoped for a better future, when my travel status would be assured.

12. Now, with the third travel ban announced, I feel like that hope is gone. I question whether living in the United States is still the best option and decision for my life. I face the same problem as so many others: my parents are getting older, and I wonder how many more years they will be with me. The third travel ban makes it difficult if not impossible for my family members to visit me. As a result I have thought seriously about moving to another country where my family would be free to visit me.

13. I am married. My wife is also Iranian. Her application for a green card is pending. She has a serious medical condition and I cannot leave her alone.

14. Because I have a green card, I know that I can travel in and out of the United States under the new travel ban. But, practically speaking, I cannot, because I cannot leave my wife. If my parents cannot visit me here, then I will be entirely cut off from my family.

15. I am personally aware of the impact the travel bans have had on the university community. At my university, I have seen several good students, all Iranians, decide against attending school in the United States. Instead they are choosing to pursue their studies elsewhere, primarily in Canada and Australia.

16. I have requested that this declaration be filed anonymously because I am afraid that if I identify myself, I may be subject to public reprisals. I am also afraid that my family's pending visa or green card applications might be negatively impacted.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: **REDACTED** Oct. 5, 2017.

/s/ **REDACTED**
JOHN DOE 4

DECLARATION OF JOHN DOE #5

I, JOHN DOE 5, declare as follows:

1. I was born in Iran.

2. I am a dual citizen of Iran and Canada.

3. I am a lawful permanent resident of the United States and I live in Hawai'i. I am currently in Dubai, but will soon be returning to Hawai'i.

4. I am a professor of Mechanical Engineering at the University of Hawai'i.

5. I am aware that President Trump issued an executive order on January 27, 2017, which temporarily banned travel from seven Muslim-majority countries, including Iran. I am also aware that on March 6, 2017, President Trump issued a new executive order that temporarily banned travel from six Muslim-majority countries, including Iran. I also understand that on September 24, 2017, President Trump issued a "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats," which imposes restrictions on entry into the United States by nationals of eight countries, including Iran.

6. The University of Hawai'i's college of engineering regularly hires students from Iran as graduate research assistants. More than 50% of the department of mechanical engineering's PhD graduates in the last two years were Iranian nationals.

[EXHIBIT E]

7. The President's travel bans have hurt PhD recruitment efforts by the University's college of engineering, and the University's overall competitiveness in attracting students to the institution. I am personally involved in recruiting for a research lab that I run, and I have noticed that fewer students are interested in attending graduate programs in the United States, including at the University, because of the uncertainty, burden, and inconvenience created by the President's travel bans. This past summer, I personally spoke with five Iranian students who all expressed hesitation about studying at the University because of the President's prior travel bans. Many students are interested in attending programs in Canada or Europe instead. This same harm to our recruitment will continue under the President's most recent proclamation. Even though there are some exemptions for student visas from Iran, it is not clear that these students, once they come to America, would be able to leave the country and come back (for example, if they obtain only single-entry visas). Moreover, many of my Iranian graduate students over the years have come to Hawai'i with spouses or partners during their studies, or have received visits from family members during their years in the United States. The President's proclamation will make it much more difficult, if not impossible, for close relatives to accompany or visit the students. PhD recruitment is a highly competitive process for universities, and students tend to be weary of barriers that force them to choose between their studies and their families. As a result, I firmly believe that the President's proclamation will continue to have a terrible impact on the ability of my lab, and the college of en-

gineering as a whole, to recruit the best and brightest Iranian students.

8. The travel bans, by hampering the University's recruitment efforts, also negatively impact the engineering program's research funding. Research grants are highly competitive, and our competitiveness at the University is often directly related to the quality of our graduate students. If we cannot bring in the best students, many of whom have historically come from Iran, we may lose competitive grants, which hurts our research funding.

9. The President's travel bans have also affected me personally. As a result of the uncertainty created by the first travel ban, including whether it would be applied to legal permanent residents, I had to cancel a trip to Sri Lanka and a trip to Europe to ensure that I would not be barred from reentering the country. I also have many family members currently living in Iran, including my parents, siblings, aunts, and uncles. They are all Iranian nationals. My mother and my sister would like to visit me in Hawai'i. We have discussed plans for them to visit, but the President's various travel bans, including the recent proclamation, have interfered with our plans. As a result of the President's recent proclamation, which bars the issuance of tourist visas to Iranian nationals entirely, my mother and my sister will not be able to enter the United States to visit me.

10. The President's recent proclamation separates me from my family. If the proclamation remains in place, I intend to return to Canada. If I remain in the

United States, I will not be able to enjoy my family's company.

11. I have requested that this declaration be filed anonymously because I am afraid that if I identify myself, I may be subject to public reprisals.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: Dubai, United Arab Emirates, Oct. 05, 2017.

/s/ **REDACTED**
JOHN DOE 5

DECLARATION OF DONALD O. STRANEY

I Donald O. Straney, do declare and would competently testify as follows.

1. I am Vice President for Academic Planning and Policy, at the University of Hawai'i System ("University"). I started in this position on August 1, 2017. From 2010 to 2017, I served as chancellor at the University of Hawai'i at Hilo. I served on the board of directors of the Hawai'i Island Chamber of Commerce and the Hawai'i County Workforce Development Board. Previously, I served eight years as dean of the College of Science and Professor of Biology at California State Polytechnic University, Pomona. As Vice President for Academic Planning and Policy, I serve as the chief academic officer for the University with overall responsibility for leadership, planning intercampus coordination of academic affairs, student affairs, policy and planning, institutional research and analysis, international and strategic initiatives and Hawai'i P-20 Partnerships for Education.

2. The University was founded in 1907 and includes three universities, seven community colleges, and community-based learning centers across six of the Hawaiian Islands.

3. The University is a leading engine for economic growth and diversification in Hawai'i. The University stimulates the local economy with jobs, research, and skilled workers.

[EXHIBIT F]

4. The University is a unique and important institution in our island State, and in our nation. Because of Hawaii's geographic islolation, the University is able to offer unique research and employment opportunities in the fields of astronomy and oceanogrpay.

5. Hawaii's location in the Pacific Ocean, balanced beween east and west, creates opportunities for international leadership and collaboration.

6. I am aware that President Trump issued an executive order on January 27, 2017, which temporarily banned travel from seven Muslim-majority countries. I am also aware that on March 6, 2017, President Trump issued a new executive order that temporarily banned travel from six Muslim-majority countries, and did not apply to legal permanent residents or other designated, limited, and narrow categories of non-citizens. I also aware that on September 24, 2017, President Trump issued a third proclamation instituting a permanent travel ban. The new executive order applies to eight countries, six of which are majority-Muslim. My understanding is that under the new order, the issuance of immigrant visas to nationals of seven countries—Chad, Iran, Libya, North Korea, Somalia, Syria, and Yemen—is indefinitely suspended. My understanding is also that under the new order, the issuance of many classes of visitor visas to nationals of the eight countries is suspended. I have also been informed that these new bars to travel to the United States apply regardless of whether the person in question poses any individualized threat of violence or any connection to terrorist activities.

7. The University is an international institution. This is reflected in our diverse faculty, which includes approximately 313 international faculty and scholars from 48 different countries. Throughout the University, we have 493 separate international agreements with 357 institutions in 40 different countries, providing opportunities for learning and collaboration for our faculty and scholars.

8. As with all institutions of higher learning, the scholarship and community of the University rely upon collaborative exchanges of ideas and research partnerships. The University relies upon faculty, teaching, research, conferences, and program activities that regularly require travel outside the United States. The new travel ban will undermine the University's ability to fully engage in the international exchange of ideas and research partnerships. Current faculty and scholar members and students at the University who are nationals of the eight designated countries, or who have close family members who are nationals of the eight designated countries, may be reluctant to remain at the University given the inability for certain family members and colleagues from abroad to immigrate and live with them or visit them here. Likewise, prospective faculty members, visiting scholars, and students from the eight designated countries could be blocked altogether from coming to the University—or highly dissuaded from doing so, given the travel ban's effect on some of their relatives. This uncertainty threatens the University's recruitment, educational programming, and educational mission.

9. The travel ban will also hinder the diversity of thought and experience that forms the backbone of any institution of higher education. A diverse student body is part of the educational experience for all students. Given my experience in higher education, I expect that the new executive order will deter students, scholars, and faculty from attending our institution—including both persons from the eight directly affected countries, but also persons from other countries and communities around the globe.

10. The executive order will directly impact the faculty and student body at the University in a number of ways.

11. I am concerned that the environment caused by these federal orders might dissuade some of our current professors or scholars from continuing their work in the United States and at our institution.

12. International students are also critical to the University's student body. At the University presently, there are 973 international students, 526 of them graduate students. Twenty of these international students are from the 8 designated countries, specifically from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, or Yemen. These students attend our institution under valid visas issued by the United States government. They study and work alongside the University's many thousands of other students. Many of these current students at the University could be affected by the new travel ban, because certain family members from the eight designated countries will not be able to obtain visas to temporarily live with them here or even visit them here.

13. Although it is too soon to determine the full impact of the new executive order on the University's future admission pool, international applications for undergraduate students and graduate students may be negatively impacted. The University receives applications from, and offers admissions to, students from the 8 designated countries. For Fall 2017, the University received 45 graduate applications from individuals from the eight affected countries and extended offers to at least 18 applicants. For Spring 2018, the University received 5 graduate applications from individuals from the eight affected countries. The University expects that under ordinary circumstances, it would continue to receive applications from—and offer admissions to—students from any of the 8 designated countries for the Fall 2018 Term.

14. The University expects that the ban may negatively impact our students and institution. Students from the eight affected countries will be unable to bring significant others who are nationals of the affected countries with them to the University and they will be unable to receive visitors from some family members who are nationals of their home countries. Together these impacts may chill these students' desire to enroll in the University as compared to universities in other countries.

15. Finally, the travel ban will affect the ability of faculty and students at the University to have the freedom to fully engage in their fields of study. It will prevent them from hosting speakers or visitors from the eight designated countries. It will prevent them from planning international exchange events.

16. As with the State of Hawai'i generally, the University prides itself on a reputation of inclusiveness, tolerance, and diversity. The new travel ban threatens this reputation, and our ability to fully embrace our priority as a global university and one of the most diverse institutions of higher education.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Oct. 6, 2017, in Honolulu, Hawai'i.

/s/ DONALD O. STRANEY
DONALD O. STRANEY

DECLARATION OF GAYE CHAN

I GAYE CHIN, do declare and would competently testify as follows.

1. I am Chair of the Department of Art and Art History ("Department") at the University of Hawai'i at Mānoa. I have served in this capacity since 2006. I also serve as a Professor in the Department. I have served as a Professor since 1991.

2. The Department, established over 75 years ago, remains one of the largest departments within the University. The Department oversees approximately 300 undergraduates pursuing degree programs in studio art and art history. In addition, students from other departments annually occupy over 3,000 seats in the Department's art classes to fulfill their university requirements and to learn global artistic traditions. Each year, the Department draws in approximately 50,000 students and members of the general public to participate in its exhibitions, programming, and outreach opportunities.

3. The Department consists of twenty-one full-time faculty members; twenty-six adjunct instructional staff, affiliate faculty, and visiting professors; and countless visiting artists, designers, and scholars.

4. As Chair of the Department, I oversee and contribute to organizing our formal visiting artist, designer, and scholar program, known as Intersections. Intersections brings in national and international members of the art community each semester to provide

both students and the general public with lectures, classroom visits, studio critiques, community presentations, and workshops or exhibitions. The length of these visits varies from 2-3 days, to an entire semester, depending on funding and availability. Intersections is a self-funded program that relies on internal fundraising and donations to attract visiting artists and scholars.

5. The Department's visiting artists, designers and scholars are often aligned with exhibitions that focus on curatorial themes, including specific traditions and geographic regions known for a particular approach to art. While planning for the spring 2018 semester, a donor reached out to express an interest in funding Persian/Iranian art initiatives, including visiting artists, scholars and exhibits. The University's student body and the public are mostly exposed to Hawai'i and American artists, so this funding presents an opportunity to broaden the State's exposure to artists from diverse and varied backgrounds.

6. In scouting artists to recruit for Intersections, the Department compiled a list of candidates with a background in Persian, Iranian, and Middle Eastern art. Of the candidates, one is a Syrian national living in Germany, and the two are Iranian nationals living in Dubai. All three are award-winning conceptual artists who have held exhibitions around the globe. They are considered "rising stars" in the art world.

7. In Hawai'i, exposure to contemporary art is limited. On O'ahu, only the Honolulu Museum of Art features contemporary art in its programming, and there is little opportunity for students to work with

burgeoning artists in the field. As a result, the State relies heavily on the University's Intersections program to attract contemporary artists to contribute to the overall cultural scene of Hawai'i.

8. Pending availability, the Department is considering offering an invitation to these artists through its Intersections program.

9. The Department is aware that President Trump issued an executive order on September 24, 2017, which bars the entry of Syrian nationals into the United States, and severely restricts the entry of Iranian nationals by narrowing the scope of permissible visas.

10. The latest travel ban will impede the Department's efforts to recruit the Syrian national to come to the University this spring as part of its visiting arts and scholars program, and will complicate the Department's efforts to invite the two Iranian nationals Because of the President's proclamation, no visas will be available for any Syrian nationals to come to Hawai'i. As to the two Iranian artists, the proclamation allows for only a limited set of non-immigrant visas to nationals of Iran, and it is unclear if the Iranian artists that the Department hopes to invite would be able to come to the United States on those visas. If either the Syrian or Iranian nationals cannot enter the United States, the Department will have to consider foregoing its plans to host an exhibition of Persian and Iranian artwork.

11. The new travel ban also impedes the Department's ability to host nationals of the affected countries as visiting scholars or artists in the future. Future

screening of visitors based on nationality and country of origin will be required. In effect, the travel ban will prohibit an entire body of art by limiting the movement of those who produce it. This impedes with the Department's role as a comprehensive and diverse center for undergraduate and graduate study.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawai'i, Oct. 4, 2017.

/s/ GAYE CHAN
GAYE CHAN

DECLARATION OF NANDITA SHARMA

I, NANDITA SHARMA, do declare and would competently testify as follows:

1. I am an Associate Professor in the Department of Sociology at the University of Hawai'i at Mānoa. I have served in this role since August 2008. From August 2006 to July 2008, I was an Assistant Professor jointly in Sociology and Ethnic Studies at the University of Hawai'i at Manoa.

2. I am the Director of the University's International Cultural Studies Program, a graduate certificate program open to any graduate student enrolled at the University. The International Cultural Studies Program, which has operated at the University for the past 20 years, takes a distinctive approach to culture, recognizing that culture is continually being made and remade through political, social, and economic forces. The University's cultural studies program is unique among cultural studies programs because it has an explicitly international focus and actively seeks to bring subjects of an international character to its U.S. audience.

3. Each semester, the International Cultural Studies Program organizes a Speaker Series, through which various scholars and speakers are invited to the University to discuss timely issues relevant to cultural studies. Students participating in the International Cultural Studies Program are required to attend the

Speaker Series to develop a broad understanding of current issues from a cultural studies perspective. The Speaker Series presentations are also open to other University students, to University faculty, and to the general public.

4. In September 2017, the International Cultural Studies Program organized a Speaker Series presentation with two journalists, both Syrian nationals from the group Raqqa is Being Slaughtered Silently ("RBSS"). One of the Syrian nationals that was set to participate in the Speaker Series was denied a visa by a U.S. Consulate, preventing that person from entering the United States and speaking at the University.

5. Although we were disappointed to lose the important perspective of one of the Syrian nationals, we continued on with the Speaker Series presentation with the other Syrian national, who obtained a B-1/B-2 visa to enter the United States. He discussed, in depth, recent events in Syria and the work of his organization, RBSS.

6. As a direct result of the Speaker Series, various professors at the University of Hawai'i would like to offer a scholarship to the Syrian national who participated in the recent presentation at the University.

7. I am aware that President Trump issued a "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats" on September 24, 2017, which, among other things, indefinitely suspends the entry of Syrian

nationals into the United States and the issuance of visas to Syrian nationals.

8. The latest travel ban will impede the University's efforts to recruit and enroll the Syrian national to whom the University would like to offer a scholarship. The Syrian national has a refugee travel document issued by Germany that is set to expire soon. As a result, it is my understanding that this individual's U.S. B-1/B-2 visa (whose issuance was contingent on the German travel document) will become useless by mid-November, and that this individual, who is currently outside the United States, will need to obtain a new U.S. visa to enter the United States. Because of the President's new travel ban, this Syrian national will not be able to accept the University's scholarship offer and will be precluded from attending the University.

9. The new travel ban also impedes the University's ability to host nationals of the affected countries as visiting scholars or speakers. For instance, the International Cultural Studies Program has invited a Syrian national who is an expert on the Syrian revolution to participate in a Speaker Series presentation this coming year. The Syrian national has indicated interest in participating in this event either in November 2017 or in January 2018. However, this Syrian national lives outside the United States and will need a visitor visa to come to Hawai'i, which the President's new travel ban blocks. Because of the travel ban, the University unfortunately will not be able to hold its planned Speaker Series event with the Syrian national's participation this November or thereafter. That

harms the University's ability to fulfill its educational mission.

10. The International Cultural Studies Program, through its ongoing relationship with the Honolulu Museum of Art, also intends to hold a Speaker Series event in conjunction with a film screening at the museum's Doris Duke Theatre. The Speaker Series event, to be held in Hawai'i, will involve a national of Chad, one of the countries affected by the latest travel ban. The Chadian national is the director of the film that the Doris Duke Theatre intends to show in connection with the visit. The Chadian national is an expert on human rights abuses in Chad. I am organizing a Speaker Series event involving the Chadian national's participation in the spring of 2018, and the Chadian national, who lives outside the United States, would need a visitor visa to participate.

11. I am aware that the latest travel ban suspends the issuance of business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas to nationals of Chad. The latest travel ban, therefore, would prevent the Chadian national from obtaining the visa necessary to participate in the University's planned Speaker Series event.

12. The new travel ban also negatively affects academic study and scholastic development at the University. The travel ban itself, in its various iterations, has become a topic of study at the University. The people affected by the travel ban are important resources in this burgeoning field of study, but access to those people is directly limited, perhaps indefinitely, by the travel ban. This impedes the development of scholarship in various departments, including sociology and political

science, and interferes with the University's ability to foster academic relationships with affected individuals.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawai'i, Oct. 4, 2017.

/s/ NANDITA SHARMA
NANDITA SHARMA

DECLARATION OF ISMAIL ELSHIKH

I, Ismail Elshikh, Ph.D. declare the following:

1. I am an American citizen of Egyptian descent, and a resident of Hawai'i. I have been a resident of Hawai'i for over a decade. My wife, Dana, who is of Syrian descent, and my five children are also American citizens and residents of Hawai'i. I am proud to be an American citizen, and consider the United States to be my home country. Because of my allegiance to America, my deep belief in the American ideals of democracy and equality, I was deeply saddened by the passage of the President's first and second Executive Orders, in January 2017 and then March 2017, barring nationals from Muslim majority countries from entering the United States. I am also deeply saddened by the President's September 24, 2017 proclamation, entitled "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats." This third ban—on immigration and travel—still targets six Muslim-majority countries, including Syria, where I have several close family members. And unlike the prior ones, this ban is permanent.

2. I am the Imam of the Muslim Association of Hawai'i. As Imam, I am a leader within the local Hawai'i Islamic community. I believe strongly in the First Amendment, religious equality, and that individuals of different faiths should be allowed to exercise

their religious beliefs, free from government suppression, and in a way that does not harm others. The members of my Mosque consider Hawai'i to be home. They are integrated into local society and culture. They have friends and family within and outside of the local Islamic community.

3. My five children are 12, 10, 8, 5 and 2 years of age. They have all been United States citizens, and Hawai'i residents, since birth. All of my children were born at Kaiser Hospital in Honolulu, Hawai'i. My older children attend school in Honolulu, and they have many friends from all walks of life. My children were aware of President Trump's first and second travel bans, and were deeply saddened by the message that both conveyed—that Muslims are uniquely dangerous and unwelcome, and that a broad travel ban in "needed" to prevent people from certain Muslim countries from entering the United States. They were, and still are, deeply affected by the knowledge that the United States—their own country—would discriminate against individuals who are of the same ethnicity as them, including members of their own family, and who hold the same religious beliefs. My children did not fully understand why the President issued those Executive Orders, but they felt hurt, confused, and sad.

4. The first and second travel bans, if they had been fully implemented, would have a direct personal effect on me, my wife, and my children, by creating an obstacle to the ability of my mother-in-law (and my children's grandmother) to visit us in Hawai'i. My wife's mother is a Syrian national, and up until this past July 2017, she had been living in Syria. My wife

filed an I-130 Petition for Alien Relative, on behalf of her mother, with the United States government in September 2015. The Petition was approved in February 2016, and my wife's mother was eagerly anticipating the completion of the rest of her visa application process. On January 31, 2017—days after President Trump signed the first Executive Order putting in place the original travel ban—I called the Nationals Visa Center to inquire as to whether the first Executive Order would impact my mother-in-law's visa application. I was told that it would; namely that as a result of the first Order, her application for an immigrant visa was on hold and would not proceed to the next stage in the process. On February 3, 2017, the District Court for the District of Washington temporarily enjoined the enforcement of the first travel ban, and the Ninth Circuit denied the Government's application for a stay. On March 2, 2017, we received an email from the National Visa Center informing us that my mother-in-law's visa application was in fact proceeding to the next stage of the process, and her interview would be scheduled at an embassy overseas. On March 6, 2017, the President signed the second travel ban. We expected that it was going to put us back in the position we were in on January 31—that her application would be put on hold—but the Hawai'i District Court issued a preliminary injunction, and the Ninth Circuit and Supreme Court upheld the part of the injunction, and the Ninth Circuit and Supreme Court upheld the part of the injunction that pertained to my mother-in-law. My mother-in-law had her visa interview in May and this past July, she received her immigrant visa from the U.S. embassy in Lebanon. In August, she came to live

with my family in Hawai'i. We are enjoying her company immensely.

6. President Trump's September 24 Proclamation is once against going to directly impact my family. My wife has four brothers who are Syrian nationals, all living in Syria with their families. Like my mother-in-law, they have for many months wanted to visit our family in Hawai'i. Because of the President's new Proclamation, my brothers-in-law will be banned from obtaining visas and blocked from visiting us indefinitely. In fact, one of my brothers-in-law recently filed for a visitor visa, on October 5, 2017, and his application is pending. My three sons were all born in the month of March, and they hope that this coming year—in March 2018—they can celebrate their birthdays in one big part for which they'd invite their relatives. They especially want to invite their uncles to come from Syria, and celebrate this triple-birthday. The latest travel ban has destroyed their dream. They told me with a sad voice, "Dad, this is not fair."

7. As a result of the Proclamation, once again, I, my wife, and my children, will be denied the company of our close relatives soley because of our religion and nationality. This is very upsetting to us. Once again, the new Proclamation denigrates our faith and makes us feel that we are second-class citizens in our own country.

8. As an Imam, I work with many members of the Hawai'i Islamic community. Many members of my Mosque are upset about the President's Proclamation, and some are very fearful. They feel that the new immigration and travel ban targets Muslim citizens

because of their religious views and national origin. The bans will have very real and direct impact upon their lives. Although many members of my Mosque consider Hawai'i to be home, many have family and friends still living in the countries affect by the Proclamation. While it remains in effect, these individuals lived in forced separation from those family members and friends.

9. I have also seen the effect of the President's refugee bans on the members of my Mosque. At least one current member of our Mosque is a refugee from a Muslim-majority country, and in the past, the Mosque had as members a family in which the husband, wife, and oldest son were applying for political asylum. It is my experience that all members of my Mosque are enriched by our relationships with refugees from Muslim-majority countries, who join our Mosque to worship with us. I, and the members of my Mosque, perceive the President's bans on refugee admissions to be yet more attacks on Muslims.

10. I personally know of more than 20 individuals who are members of my community and mosque, who have immediate relatives in the six Muslim-majority countries designated under the Proclamation—especially Syria, Iran, and Yemen. These persons will, once again, be unable to receive visits from their relatives, including spouses, parents, and children.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, Oct. 6, 2017.

/s/ ISMAIL ELSHIKH
ISMAIL ELSHIKH, PH.D.

DECLARATION OF GEORGE SZIGETI

I, GEORGE SZIGETI, do declare and would competently testify as follows.

1. I am the President and Chief Executive Officer of the Hawai'i Tourism Authority (HTA). I have served in this role since May 2015. From 2012 to 2015, I was the President and CEO of the Hawai'i Lodging and Tourism Association, a private organization of Hawai'i tourism industry leaders, which represents over 700 lodging properties and businesses across the State.

2. The HTA was established in 1998 as the lead state agency for Hawaii's tourism industry. The HTA is the stage agency charged with the research, development, and fostering of tourism in Hawai'i. HTA's mission is to strategically manage Hawai'i tourism in a sustainable manner consistent with economic goals, cultural values, preservation of natural resources, community desires, and visitor industry needs.

3. The Tourism Special Fund was also established in 1998. It is a set percentage of the transient accommodations tax collections that is assessed on hotels, vacation rentals, and other accommodations. It is used by the HTA to market, develop, and support Hawaii's tourism economy.

4. Among its responsibilities, HTA is charged with:

[EXHIBIT J]

a. setting tourism policy and direction from a statewide perspective;

b. developing and implementing the State's tourism marketing plan and efforts;

c. supporting programs and initiatives that enhance and showcase Hawaii's diverse peoples, places, and cultures of the islands, in order to deliver an incomparable visitor experience, including supporting Native Hawaiian culture and community, signature events and festivals, and preservation and proper use of Hawaii's striking natural resources;

d. managing programs and activities to sustain a healthy tourism industry for the State;

e. coordinating tourism-related research, planning, promotional and outreach activities with the public and private sectors; and

f. encouraging distribution of visitors across all of the Hawaiian Islands to balance capacity.

5. HTA maintains data regarding visitor arrivals and total visitor spending for various regions around the world.

6. The data maintained by our agency shows the following for the last five years:

	2012	2013	2014	2015	2016
Total Visitor Expend-itures (in Million $)	$14,364.8	$14,520.5	14,973.3	$15,110.9	$15,745.7
Total arrivals (by air and cruise ships)	8,028,743	8,174,461	8,320,785	8,679,564	8,941,394
Arri-vals by Air	7,867,143	8,003,474	8,196,342	8,563,018	8,832,598
Arri-vals by cruise ship	161,000	170,987	124,443	116,546	108,796

The total visitor expenditures reported in this chart from 2012-2015 includes supplemental business expenditures. For 2016, the data is preliminary and the supplemental business expenditures have been estimated.

7. To translate, Hawaii's tourism industry brought well over $14 billion into the State during 2012 to 2014. In 2015 and 2016, it brought in over $15 billion. Tourism is the leading economic driver in the State.

8. As this data shows, airline travel is far and away the preferred method to travel to Hawai'i. in 2016, for example, a total of 8,941,394 people arrived in the islands. Only 108,796 of this total (1.2%) arrived by cruise ship.

9. Our data also shows that there is a steady flow of visitors from the Middle East and Africa. The data maintained by our agency shows the following for the last five years:

Visitor Arrivals	2012	2013	2014	2015	2016
Middle East	3,565	3,182	5,784	6,804	5,451
Africa	1,345	1,111	1,877	2,090	1,725

This data reflects visitor arrivals, in surveys taken for air arrivals. The 2016 data is preliminary.

10. The data maintained by our agency also shows the following monthly arrivals from the Middle East and Africa for the same time period (January to August) in 2017 and 2016:

	Middle East		Africa	
	2017	2016	2017	2016
January	278	348	89	141
February	155	403	38	119
March	84	320	86	73
April	300	322	98	134
May	323	442	119	162
June	263	338	152	102
July	694	881	258	113
August	587	874	155	315
Total	2,884	3,928	995	1,159

These statistics are preliminary and are based on survey data.

11. Therefore, this data shows that 2,884 visitors arrived from the Middle East from January to August 2017. This is a decrease from 3,928 visitors from the same region from January to August 2016.

12. This data also shows that 995 visitors arrived from Africa from January to August 2017. This is a decrease from 1,159 visitors who arrived from Africa from January to August 2016.

13. As our data is maintained, the region Middle East includes Iran, Syria, and Yemen.

14. As our data is maintained, the region Africa includes Chad, Libya, and Somalia.

15. HTA also maintains data about the reasons why visitors come to Hawai'i, such as vacation, business, or to visit family and friends.

16. Our data shows that in 2016, Hawai'i hosted more than 8.8 million visitors by air. Of these over 8.8 million visitors, approximately 5.4 million visitors came from elsewhere in the United States; 1.5 million came from Japan; 478,000 came from Canada; 443,000 came from other Asian countries; 399,000 came from Oceania (including Australia and New Zealand); 142,000 came from Europe; 26,000 came from Latin America; and another 325,000 came from the rest of the world (including the Middle East and Africa).

17. Of the 8.8 million total visitors who came to Hawai'i in 2016, 8.2% of them (more than 720,000) came to visit family and friends here. Of the 325,000 visitors who came to Hawai'i in 2016 from the areas of the globe that include the Middle East and Africa, 12.3% of them (nearly 40,000) came to visit family and friends here.

18. Our data shows that in 2015, Hawai'i hosted more than 8.5 million visitors by air. Of these over 8.5 million visitors, approximately 5.3 million visitors came from elsewhere in the United States; 1.5 million came from Japan; 512,000 came from Canada; 393,000 came from other Asian countries; 399,000 came from Oceania (including Australia and New Zealand); 145,000 came from Europe; 28,000 came from Latin America; and another 290,000 came from the rest of the world (including the Middle East and Africa).

19. Of the 8.5 million visitors who came to Hawai'i in 2015, 8.4% of them (more than 717,000) came to visit family and friends here. Of the 290,000 visitors who came from the areas of the globe that include the Middle East and Africa, 11.9% of them (around 34,000) came to visit family and friends here.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6 of Oct., 2017, in Honolulu, Hawai'i.

/s/ GEORGE SZIGETI
GEORGE SZIGETI

DECLARATION OF LUIS P. SALAVERIA

I, LUIS P. SALAVERIA, do declare and would competently testify as follows:

1. I am the Director of the State of Hawaii Department of Business, Economic Development and Tourism (DBEDT). I have held this position since December 2014. Prior to this position, I served as the State's Deputy Director of Finance from 2011 to 2014.

2. As Director, I lead DBEDT's efforts to achieve a Hawaii economy that embraces innovation and is globally competitive and dynamic, providing opportunities for all Hawaii's citizens.

3. Through our attached agencies, we also foster planned community development, create affordable workforce housing units in high-quality living environments, and promote innovation sector job growth.

4. In my professional experience working for and promoting Hawaii, the ability for government and business leaders to travel to each other's respective countries is critical to maintaining Hawaii's tourism economy and to expand our local economy's potential beyond tourism.

5. The networking and trust-building that occurs as a result of travel is not something that can be replicated through phone calls, emails, or video-

conferences. Meaningful relationships between government agencies, private businesses, and community organizations are best accomplished through direct interaction and face-to-face engagements.

6. I have recently traveled to Japan, Korea, and the Philippines to explore opportunities for collaborative engagements in renewable energy and to discuss Hawaii's renewable energy laws.

7. As a result of my trip to the Philippines, a delegation from that country came to Hawaii to participate in our annual Clean Energy Summit. They also participated in one of our business start-up accelerator programs and invested funds into the program. This outcome would not have been possible if not for the willingness of these individuals to travel to Hawaii.

8. The State of Hawaii maintains a number of sister-state relationships with countries throughout world. Countries such as China, Indonesia, Japan, Philippines, and Taiwan are partners to Hawaii in this global economy, and these relationships are integral to maintaining Hawaii's position as a global destination and place of business. The ability to interact with these countries is crucial to these relationships.

9. Through news coverage and through conversations with others in state government, I am aware that on January 27, 2017, President Donald Trump signed an Executive Order entitled "Protecting the Nation from Foreign Ter-

rorist Entry Into the United States." It is my understanding that this first executive order temporarily barred entry into the United States of any citizens of any one of six countries: Iraq, Iran, Somalia, Sudan, Libya and Yemen, and barred indefinitely entry into the United States of any citizens of Syria.

10. I am also aware that a great deal of confusion and inconsistent implementation occurred as the first executive order was placed into effect nationwide. I am aware of the news coverage regarding the first executive order and how its impact was felt around the world and here in Hawaii.

11. I am aware that on March 6, 2017, President Trump issued a second executive order. This order temporarily banned travel from six Muslim-majority countries, and did not apply to legal permanent residents or certain other limited and narrow categories of non-citizens. I am also aware that the second executive order was issued after weeks of speculation and uncertainty, after the federal government had represented on February 16, 2017 that a new order would be issued in the near future.

12. Based on my professional experience, it is my opinion that the first two executive orders impaired Hawaii's relationships with foreign countries. Hawaii has millions of visitors annually from all over the world. Given the instability the first two executive orders caused to international travel generally, Hawaii's rep-

utation as a place of acceptance, hospitality, and cultural diversity, was negatively impacted. It is also my opinion that the first two executive orders may have resulted in visitors who would have chosen to visit Hawaii to look instead at other destinations where travel was not impeded.

13. I am aware that on September 24, 2017, President Trump issued a new executive order. This order identifies seven countries—Iran, Libya, Syria, Yemen, Somalia, Chad, and North Korea—whose nationals are either banned entirely or severely restricted from entering the United States. Almost all business and tourist travel is banned from these countries. Certain government officials from an eighth country—Venezuela—are banned from entering the United States. It is my understanding that the new executive order has no time limitation and that the persons from these eight countries who are barred from entry into the United States are barred indefinitely. It is also my understanding that the bar to travel to the United States in the new executive order applies regardless of whether the person in question poses a specific threat of violence or any connection to terrorist activities in any way.

14. In my experience as DBEDT director, Hawaii has always been viewed as a place of acceptance, hospitality, and cultural diversity. Any action that jeopardizes that reputation has the ability to do significant harm to our State's

brand. For many of our visitors, Hawaii is a vacation destination, and people generally take vacations to places where they feel welcome, invited, and safe.

15. Hawaii's financial and business interests in its tourist economy, and its well-earned reputation and brand as a place of welcome, inclusivity, and tolerance, are presently being threatened by the new executive order.

16. In addition to being a tourist destination, Hawaii has been positioning itself for many years as a hub of international business, located midway between Asia and the continental United States. In my time in state government, I have witnessed and been part of efforts to attract business and financial investments to Hawaii by emphasizing our inclusiveness and diversity. I believe that the new executive order causes current and clear harm to this reputation and may negatively impact Hawaii's ability to attract future investments from countries that are not currently named in the new executive order.

17. In my professional travel experience working to expand Hawaii's businesses, I have learned how important it is that Hawaii maintain its reputation as a place of inclusivity and welcome. I believe the new executive order is presently undermining this reputation.

18. It is my opinion that the new order also has the potential to do even more harm to Hawaii than

the two prior executive orders because the new order is of an indefinite duration and affects more regions of the world. A permanent ban on entry to the United States will adversely impact the image of Hawaii has on people from the regions of the world where this order applies. The order may, therefore, inhibit travel to Hawaii and other parts of the United States from countries well beyond the eight countries who nationals are banned from entry to the United States.

19. This anticipated negative effect of the new executive order on visitors to Hawaii is consistent with aggregate data showing how the first two travel bans depressed visitors from the Middle East to the United States as a whole. A recent study by Politico (available at http://www.politico.com/interactives/2017/trump-travel-ban-muslim-visa-decline/) found that during the six month period from March 2017 through August 2017 (while the second executive order was in effect), the number of visas issued to visitors from the six countries affected by the second order fell 44 percent compared to the prior year. And, the study also found that the number of visitor visas issued to people from all Arab countries fell 16 percent compared to the prior year, even as the number of visas issued to people from all nations remained unchanged. This data shows that visitors from the Middle East are simply choosing to not come to the United States at all because of the President's

travel bans. The effect of trends like this on Hawaii is particularly problematic because of Hawaii's significant economic interests in its tourist economy and its efforts to position itself as a hub of international business.

20. At this point it is difficult to determine with precision how all of the effects of the new executive order will play out for Hawaii's air travelers. Nevertheless, Hawaii is uniquely positioned geographically, in the middle of the Pacific Ocean. For the vast majority of our visitors, flying is the only way to travel here.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6th of Oct., 2017, in Honolulu, Hawai'i.

/s/ LUIS P. SALAVERIA
LUIS P. SALAVERIA

DECLARATION OF HAKIM OUANSAFI

I, HAKIM OUANSAFI, do declare and would competently testify as follows:

1. I am the Chairman of The Muslim Association of Hawaii, Inc. ("MAH"). I have held this position for approximately 15 years. I have been in the United States since 1986 and a resident of Hawaii since 1998.

2. I have personal knowledge of the matters set forth in this declaration.

3. I am aware that on September 24, 2017, President Trump issued a proclamation ("EO-3") that bars from the U.S. millions of people from Muslim-majority countries Chad, Iran, Libya, Syria, Yemen, and Somalia, as well as people from North Korea and Venezuela.

4. The MAH is a non-profit entity incorporated under the laws of the State of Hawaii. It is the only formal Muslim organization in the State of Hawaii serving Muslims statewide. Dr. Elshikh, a plaintiff in this case, in the Imam (minister) of the Association.

5. The Association serves approximately 5,000 Muslims, with approximately 4,500 of them on Oahu and 500 on other islands. The Association runs the Mosques on Oahu, Kauai and Maui.

[EXHIBIT L]

6. We hold Friday prayer gatherings at the above referenced Mosques every week. Typically, 300-400 Muslim worshipers attend the Oahu Mosque each week. I attend every prayer gathering except when I am traveling.

7. As Chairman of the MAH, I am the official contact person for any matters affecting the Association and the Muslim community.

8. Having lived in Hawaii for nearly 20 years, with much of that time as Chairman of the Association, I have come to know our members well.

9. It is part of my responsibility as Chairman to greet any newcomers and visitors to our Association. Through such interactions, I generally come to learn the circumstances under which our worshipers not already from Hawaii have come to be in Hawaii, whether for the long-term or short-term.

10. As Muslims, it is part of our religious practice, and our Holy text, to visit each other to connect with our Islamic brothers and sisters. Verses of the Noble Quran and various Hadeeth of the Prophet call strongly for the upholding if kinship ties and encourage this by offering worldly and religious rewards. EO-3 will interfere with this religious exercise by preventing Muslims from the affected countries from coming to Hawaii to visit their family members, the majority of who are American citizens, and consequently interfere with these families' ability to fulfill this specific religious requirement.

11. Over the last decade the Association has continually drawn on new arrivals to Hawaii from Middle Eastern and African countries to add to our community of worshipers, including persons immigrating as lawful permanent residents and shorter-term visitors coming to Hawaii for business, professional training, university studies, and tourism.

12. New arrivals who decide to reside in Hawaii automatically become members of the Association and include, in the last decade, foreign-born individuals from Syria, Somalia, Iran, Yemen, and Libya who are not naturalized U.S. citizens or lawful permanent residents.

13. EO-3, however, will make it more difficult for the Association to have new members from the affected countries in the future. If people from the affected countries cannot come to Hawaii, they cannot become members of the Association.

14. EO-3 will deter our current members from remaining in Hawaii because they cannot receive visits from their family members and friends from the affected countries if they do. I personally know of at least one family who made that difficult choice and left Hawaii and know of others who have talked about doing the same.

15. EO-3 will harm the members of our Association who do remain in Hawaii because they cannot receive visits from their family members and

friends from the affected countries. I am aware of a few families who are directly affected by this EO.

16. The travel bans are affecting travel from other Muslim-majority countries, and not just those designated by the ban. I am aware of four families from Morocco who canceled plans to come to Hawaii because they were afraid that they might become subject to the travel bans in the future, or be discriminated against because of the their faith.

17. I am also aware of at least one family of four who was told by the embassy in Morocco in early August 2017 that their visitor visa has been approved and requested passports. The family purchased non-refundable tickets to Hawaii but unfortunately and as of the date of this statement, the visa was not granted and the embassy still holds their passports.

18. With EO-3 in place, the Association's membership will likely decrease over time, which will negatively impact the ability of the Association to continue to serve the Muslim community in Hawaii. By systematically—and indefinitely—banning people from the affected countries, EO-3 will harm the ability of Muslims in Hawaii to continue to worship together.

19. The Association's only source of income is from charitable contributions from its members and from visitors to the Mosque to support its operations. The likely decrease in the Associa-

tion's membership and in visitors due to EO-3 will harm the Association's finances.

20. The anti-Muslim animus underlying EO-3 and the two travel bans before it inflicts a stigmatic harm on our members. We are being made to feel by our own government like we are less than other Americans because of our religion. The travel bans have led to an increase in violence, threats of violence, harassment, and verbal insults against Muslims in Hawaii. I strongly believe that increased acts of hatred, insults, threats and violence in the United States including Hawaii are the result of the President's statements about Muslims and Islam.

21. Our children and their parents are living in fear because of the travel bans. That fear has led to, by way of example, children wanting to change their Muslim names and parents wanting their children no to wear head coverings to avoid being victims of violence. Some of our young people have said they want to change their religion because they are afraid to be Muslims.

22. There is a real fear within our community especially among our children and American Muslims who were born outside the United States because we take very seriously the countless words and statements by President Trump that threaten us and our religion, including his call for a Muslim ban, his pledge to kick out all Syrian refugees, and his statements that he would look into the idea of closing

Mosques in the United States and creating a Muslim database.

23. The ban is cruel and arbitrary. If our loved ones happen to be from one of the affected countries, we are unable to have them visit us to celebrate important events or to grieve losses with us, while our neighbors whose loved ones are from non-affected countries do not suffer the same harm.

24. Especially because it is permanent, EO-3 has—even more than its predecessor bans—caused tremendous fear, anxiety, and grief for our members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Oct. 9, 2017, in Honolulu, Hawai'i.

/s/ HAKIM OUANSAFI
HAKIM OUANSAFI

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil Action No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII, ISMAIL ELSHIKH, JOHN DOES 1 & 2, AND MUSLIM ASSOCIATION OF HAWAII, INC., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; ELAINE DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF NEAL K. KATYAL IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER; EXHIBIT M IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER; CERTIFICATE OF SERVICE

DECLARATION OF NEAL K. KATYAL IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

I, NEAL K. KATYAL, hereby state and declare as follows:

1. I am counsel for Plaintiffs, the State of Hawaii, Ismail Elshikh, John Does 1 & 2, and the Muslim Association of Hawaii, Inc. I have personal knowledge of and am competent to testify to the truth of the matters

stated herein. This Declaration is submitted in support of Plaintiffs' Motion for Temporary Restraining Order (Dkt. No. 368).

2. Attached as Exhibit M is a true and correct copy of a Joint Declaration of Former National Security Officials. The declaration is submitted in the form it was provided to counsel for Plaintiffs by a third party.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Washington, DC, Oct. 15, 2017.

/s/ NEAL K. KATYAL
NEAL K. KATYAL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil Action No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII, ISMAIL ELSHIKH, JOHN DOES 1 & 2, AND MUSLIM ASSOCIATION OF HAWAII, INC., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; ELAINE DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

JOINT DECLARATION OF FORMER NATIONAL SECURITY OFFICIALS

We, the below named individuals, declare as follows:

1. We are former national security, foreign policy, and intelligence officials in the United States Government:

a. Madeleine K. Albright served as Secretary of State from 1997 to 2001. A refugee and naturalized American citizen, she served as U.S. Permanent Representative to the United Nations from 1993 to 1997. She has also been a member of the Central Intelligence Agency

External Advisory Board since 2009 and of the Defense Policy Board since 2011, in which capacities she has received assessments of threats facing the United States.

b. Rand Beers served as Deputy Homeland Security Advisor to the President of the United States from 2014 to 2015.

c. John B. Bellinger III served as the Legal Adviser for the U.S. Department of State from 2005 to 2009. He previously served as Senior Associate Counsel to the President and Legal Adviser to the National Security Council from 2001 to 2005.

d. Daniel Benjamin served as Ambassador-at-Large for Counterterrorism at the U.S. Department of State from 2009 to 2012.

e. Antony Blinken served as Deputy Secretary of State from 2015 to January 20, 2017. He previously served as Deputy National Security Advisor to the President of the United States from 2013 to 2015.

f. John O. Brennan served as Director of the Central Intelligence Agency from 2013 to 2017. He previously served as Deputy National Security Advisor for Homeland Security and Counterterrorism and Assistant to the President from 2009 to 2013.

g. R. Nicholas Burns served as Under Secretary of State for Political Affairs from 2005 to 2008.

He previously served as U.S. Ambassador to NATO and as U.S. Ambassador to Greece.

h. William J. Burns served as Deputy Secretary of State from 2011 to 2014. He previously served as Under Secretary of State for Political Affairs from 2008 to 2011, as U.S. Ambassador to Russia from 2005 to 2008, as Assistant Secretary of State for Near Eastern Affairs from 2001 to 2005, and as U.S. Ambassador to Jordan from 1998 to 2001.

i. James Clapper served as U.S. Director of National Intelligence from 2010 to January 20, 2017.

j. David S. Cohen served as Under Secretary of the Treasury for Terrorism and Financial Intelligence from 2011 to 2015 and as Deputy Director of the Central Intelligence Agency from 2015 to January 20, 2017.

k. Eliot A. Cohen served as Counselor of the U.S. Department of State from 2007 to 2009.

l. Bathsheba N. Crocker served as Assistant Secretary of State for International Organization Affairs from 2014 to 2017.

m. Ryan Crocker served as U.S. Ambassador to Afghanistan from 2011 to 2012, as U.S. Ambassador to Iraq from 2007 to 2009, as U.S. Ambassador to Pakistan from 2004 to 2007, as U.S. Ambassador to Syria from 1998 to 2001, as U.S. Ambassador to Kuwait from 1994 to 1997, and U.S. Ambassador to Lebanon from 1990 to 1993.

n. Thomas Donilon served as U.S. National Security Advisor from 2010 to 2013.

o. Jen Easterly served as Special Assistant to the President and Senior Director for Counterterrorism from October 2013 to December 2016.

p. Daniel Feldman served as U.S. Special Representative for Afghanistan and Pakistan from 2014 to 2015, Deputy U.S. Special Representative for Afghanistan and Pakistan from 2009 to 2014, and previously Director for Multilateral and Humanitarian Affairs at the National Security Council.

q. Jonathan Finer served as Chief of Staff to the Secretary of State from 2015 until January 20, 2017, and Director of the Policy Planning Staff at the U.S. Department of State from 2016 to January 20, 2017.

r. Michèle Flournoy served as Under Secretary of Defense for Policy from 2009 to 2013.

s. Robert S. Ford served as U.S. Ambassador to Syria from 2011 to 2014, as Deputy Ambassador to Iraq from 2009 to 2010, and as U.S. Ambassador to Algeria from 2006 to 2008.

t. Josh Geltzer served as Senior Director for Counterterrorism at the National Security Council from 2015 to 2017. Previously, he served as Deputy Legal Advisor to the National Security Council and as Counsel to the Assistant Attorney General for National Security at the Department of Justice.

u. Suzy George served as Deputy Assistant to the President and Chief of Staff and Executive Secretary to the National Security Council from 2014 to 2017.

v. Phil Gordon served as Special Assistant to the President and White House Coordinator for the Middle East, North Africa and the Gulf from 2013 to 2015, and Assistant Secretary of State for European and Eurasian Affairs from 2009 to 2013.

w. Chuck Hagel served as Secretary of Defense from 2013 to 2015, and previously served as Co-Chair of the President's Intelligence Advisory Board. From 1997 to 2009, he served as U.S. Senator for Nebraska, and as a senior member of the Senate Foreign Relations and Intelligence Committees.

x. Avril D. Haines served as Deputy National Security Advisor to the President of the United States from 2015 to January 20, 2017. From 2013 to 2015, she served as Deputy Director of the Central Intelligence Agency.

y. Luke Hartig served as Senior Director for Counterterrorism at the National Security Council from 2014 to 2016.

z. General (ret.) Michael V. Hayden, USAF, served as Director of the Central Intelligence Agency from 2006 to 2009. From 1995 to 2005, he served as Director of the National Security Agency.

aa. Heather A. Higginbottom served as Deputy Secretary of State for Management and Resources from 2013 to 2017.

bb. Christopher R. Hill served as Assistant Secretary of State for East Asian and Pacific Affairs from 2005 to 2009. He also served as U.S. Ambassador to Macedonia, Poland, the Republic of Korea, and Iraq.

cc. John F. Kerry served as Secretary of State from 2013 to January 20, 2017.

dd. Prem Kumar served as Senior Director for the Middle East and North Africa on the National Security Council staff of the White House from 2013 to 2015.

ee. Richard Lugar served as U.S. Senator for Indiana from 1977 to 2013, and as Chairman of the Senate Committee on Foreign Relations from 1985 to 1987 and 2003 to 2007, and as ranking member of the Senate Committee on Foreign Relations from 2007 to 2013.

ff. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000 to 2004 and as Acting Director in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.

gg. Lisa O. Monaco served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor from 2013 to January 20, 2017.

hh. Cameron P. Munter served as U.S. Ambassador to Pakistan from 2009 to 2012 and to Serbia from 2007 to 2009.

ii. James C. O'Brien served as Special Presidential Envoy for Hostage Affairs from 2015 to January 20, 2017. He served in the U.S. Department of State from 1989 to 2001, including as Principal Deputy Director of Policy Planning and as Special Presidential Envoy for the Balkans.

jj. Matthew G. Olsen served as Director of the National Counterterrorism Center from 2011 to 2014.

kk. Leon E. Panetta served as Secretary of Defense from 2011 to 2013. From 2009 to 2011, he served as Director of the Central Intelligence Agency.

ll. Jeffrey Prescott served as Special Assistant to the President and Senior Director for Iran, Iraq, Syria and the Gulf States from 2015 to 2017.

mm. Samantha J. Power served as U.S. Permanent Representative to the United Nations from 2013 to January 20, 2017. From 2009 to 2013, she served as Senior Director for Multilateral and Human Rights on the National Security Council.

nn. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009 to 2013 and as National Security Advisor from 2013 to January 20, 2017.

oo. Anne C. Richard served as Assistant Secretary of State for Population, Refugees and Migration from 2012 to January 20, 2017.

pp. Kori Schake served as the Deputy Director for Policy Planning at the U.S. Department of State from December 2007 to May 2008. Previously, she was the director for Defense Strategy and Requirements on the National Security Council in President George W. Bush's first term.

qq. Eric P. Schwartz served as Assistant Secretary of State for Population, Refugees and Migration from 2009 to 2011. From 1993 to 2001, he was responsible for refugee and humanitarian issues on the National Security Council, ultimately serving as Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs.

rr. Wendy R. Sherman served as Under Secretary of State for Political Affairs from 2011 to 2015.

ss. Vikram Singh served as Deputy Special Representative for Afghanistan and Pakistan from 2010 to 2011 and as Deputy Assistant Secretary of Defense for Southeast Asia from 2012 to 2014.

tt. Jeffrey H. Smith served as General Counsel of the Central Intelligence Agency from 1995 to 1996. Previously, he served as General Counsel of the Senate Armed Services Committee.

uu. James B. Steinberg served as Deputy National Security Adviser from 1996 to 2000 and as Deputy Secretary of State from 2009 to 2011.

vv. William Wechsler served as Deputy Assistant Secretary for Special Operations and Combating Terrorism at the U.S. Department of Defense from 2012 to 2015.

ww. Samuel M. Witten served as Principal Deputy Assistant Secretary of State for Population, Refugees, and Migration from 2007 to 2010. From 2001 to 2007, he served as Deputy Legal Adviser at the State Department.

We have collectively devoted decades to combatting the various terrorist threats that the United States faces in a dynamic and dangerous world. We have held the highest security clearances, and many of us were current on active intelligence regarding all credible terrorist threat streams directed against the United States as recently as one week before the issuance of the Jan. 27, 2017 Executive Order on "Protecting the Nation from Foreign Terrorist Entry into the United States" ("Travel Ban 1.0"). A number of us joined a declaration that was filed in support of a

legal challenge to that Executive Order.[1] Each of us also joined an amicus brief that was filed in the Supreme Court in support of the challenge of the plaintiffs in this case to the subsequent March 6, 2017 Executive Order ("Travel Ban 2.0").[2]

2. The Administration has now replaced the Travel Ban 2.0 with a new Proclamation titled "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats." The Proclamation is dated September 24, 2017, and is scheduled to take effect fully on October 18, 2017 ("Travel Ban 3.0" or "Ban").

3. The Ban preserves the basic approach of the original two Orders, without providing any persuasive evidence that these measures are necessary to enhance our national security or foreign policy interests. The Ban includes a few new exceptions to the prior Order, adds a couple of countries to the list (Chad, North Korea, and Venezuela) and removes a country (Sudan). But it still relies on unprecedented and sweeping nationality-based bans, directed at a list of almost exclusively Muslim-majority countries that is substantially similar to the prior lists. (The North Korea and Venezuela additions will affect exceedingly few people,

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[1] Joint Decl. of Madeline Albright et al., No. 17-35105 (9th Cir. Feb. 6, 2017), available at https://apps.washingtonpost.com/g/documents/politics/declaration-of-national-security-officials/2324/.

[2] Br. of Amici Curiae Former National Security Officials in Support of Respondents, Nos. 16-1436 and 16-1540 (U.S. Sup. Ct. Sept. 18, 2017), available at https://law.yale.edu/system/files/documents/pdf/Clinics/rolc_amicus_9.19.17_.pdf

and Chad is a majority-Muslim country.) The Ban blocks well over 150 million people from entering the United States.[3]

4. We agree that the United States faces real threats from terrorist networks and must take all prudent and effective steps to combat them, including the appropriate vetting of travelers to the United States. Yet, we are unaware of any national security threat that would justify Travel Ban 3.0. To the contrary, its enforcement would cause serious harm to the national security and foreign policy of the United States.

I. Travel Ban 3.0 Serves No Genuine National Security Purpose

5. As a national security measure, this Ban is unnecessary. National security-based immigration restrictions have consistently been tailored to respond to: (1) specific, credible threats based on individualized information, (2) the best available intelligence, and (3) thorough interagency legal and policy review. Travel Ban 3.0 rests not on such tailored grounds, but rather, on (1) general bans (2) that are not responsive to an actual national security threat informed by intelligence, and (3) that emerged from a January Order that was not vetted through the kind of careful interagency legal and policy review that we would expect from a serious national security process.

6. The Ban is of unprecedented scope. Apart from Travel Bans 1.0 and 2.0, we know of no case where a

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[3] This figure reflects the population of the listed countries in the Proclamation, excluding North Korea and Venezuela.

President has invoked his statutory authority to suspend admission for such a broad class of people. Even after the 9/11 attacks, the U.S. Government did not invoke the provisions of law cited by the Administration to broadly bar entrants based on nationality, national origin, or religious affiliation. Suspensions were limited to particular individuals or subclasses of nationals who posed a specific, articulable threat based on their known actions and affiliations. In adopting Travel Ban 3.0, the Administration alleges no derogatory factual information about any particular recipient of a visa or green card or any credible threat from nationals of the countries banned.

7. Since the 9/11 attacks, the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities. This vetting is applied to travelers not once, but multiple times. As government officials, we sought continually to improve that vetting, as was done in response to particular threats identified by U.S. intelligence in 2011 and 2015. Indeed, successive administrations have continually worked to improve this vetting through robust information-sharing and data integration, without resorting to multiple, sweeping bans on travel. We have seen no evidence from the Government for why the country suddenly needs to shift from this tested system of individualized vetting, developed and implemented by national security professionals across the government, to a national origin-based ban.

8. The current individualized vetting system places the burden of proof on the traveler to prove her iden-

tity and eligibility for travel. If the traveler is unable to make this showing, the U.S. Government can deny her a visa based on an individualized review. This has been the policy of the U.S. Government across multiple administrations.

9. Travel Ban 3.0's generalized, country-based approach is substantially the same as its predecessors, although its bans on travel are now indefinite rather than temporary, and the stated rationale has shifted. Removing most of the emphasis on terrorism, the new Ban is purportedly necessary "to elicit improved identity-management and information-sharing protocols and practices from foreign governments." We have seen no evidence, however, that such a sweeping, country-based ban on travel is necessary for this objective.

10. In fact, the only concrete evidence to emerge from this administration on this point to date has shown just the opposite, that country-based bans are ineffective. A leaked DHS Office of Intelligence and Analysis memorandum analyzing the ban in the January Order found that "country of citizenship is unlikely to be a reliable indicator of potential terrorist activity." The memorandum went on to note that a majority of the U.S.-based individuals who were inspired by a foreign terrorist organization to participate in terrorism-related activity were citizens of the United States; the minority of foreign-born individuals were scattered from among twenty-six different countries; and most of

the top origin countries of those individuals are not the countries listed in the Order.[4]

11. Imposing a ban on all or most of the travelers for a series of countries due to the information sharing practices of their government is a massively overbroad and imprecise response, especially ***when the data does not show any particularized threat from those countries.*** Defendants have provided no evidence or specific information that nationals of the banned countries pose a credible threat to the safety of Americans if they are allowed to enter the United States after individualized screenings, or of the alleged harm that would occur in the absence of the ban. The Ban targets a list of countries whose nationals have committed no deadly terrorist attacks on U.S. soil in the last forty years.[5] In fact, a recent analysis by the Cato Institute shows that each new version of the travel ban is "even further divorced from threats of terrorism to the United States than the prior order."[6]

In particular:

a. The Ban newly adds Chad to the list of countries subject to a ban. No citizen of Chad has

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[4] *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States,* https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf.

[5] Alex Nowrasteh, *President Trump's New Travel Executive Order Has Little National Security Justification,* Cato Institute: Cato at Liberty, September 25, 2017.

[6] David Bier, *New Travel Ban Would Not Have Prevented the Entry of Any Terrorists Since 9/11,* Cato Institute: Cato at Liberty, September 25, 2017.

carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. Chad, a Muslim-majority country, has long been one of the United States' most effective counterterrorism partners in the region. Chad has been used as a staging ground by the U.S. Air Force in its surveillance of Boko Haram, hosted about 2,000 U.S. troops for an annual military exercise in March 2017, and is the base of the Multinational Joint Task Force, the coordinated effort to fight Boko Haram in the region. The presence of Boko Haram in Chad is dwarfed by their activity in other countries in the region that were not included in the ban. Chad's inclusion on the Travel Ban 3.0 list reportedly occurred over objections by officials in the State Department, the Pentagon, the U.S. Embassy in Chad, and U.S. Africa Command, a decision that left administration officials "befuddled and frustrated."[7]

b. The Ban newly adds North Korea (DPRK) to the list of countries subject to a ban. No citizen of North Korea has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. Because of severe exit restrictions imposed by the North Korean government, very few North Koreans actually travel to the United States at all. North Korean defectors typically first receive

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[7] Helene Cooper et al., *Chad's Inclusion in Travel Ban Could Jeopardize American Interests, Officials Say*, N.Y. Times, Sept. 26, 2017.

South Korean passports in any event.[8] In addition, such defectors would likely have a well-founded fear of political persecution if returned to North Korea, and thus deserve careful consideration for refugee status.

c. The Ban newly adds Venezuela to the list of countries subject to a ban. No citizen of Venezuela has carried out a terrorist attack or been convicted of planning an attack on U.S. soil in the last forty years. The Ban only applies to officials from government agencies involved in screening and vetting procedures. Such targeted sanctions are more appropriately done by the Treasury Department under the International Emergency Economic Powers Act and other legal authorities rather than through overbroad country bans.

12. Notably, the Ban does not include non-Muslim majority countries such as Belgium where there have been widely-documented problems with information sharing, and whose nationals have carried out terrorist attacks on Europe. And although for some of the countries, the Ban applies only to certain non-immigrant visas, together those visas are far and away the most frequently used non-immigrant visas from these nations.

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[8] Darla Cameron, *Why Trump's Latest Travel Ban Included These Eight Countries*, Wash. Post (Sept. 26, 2017); Emily Rauhala, *Almost No North Koreans Travel to the U.S., So Why Ban Them?*, Wash. Post (Sept. 25, 2017).

II. Travel Ban 3.0 Will Harm the National Security and Foreign Policy Interests of the United States

13. In our professional judgment, Travel Ban 3.0 would undermine the national security of the United States, rather than making us safer. If given effect, Travel Ban 3.0 would do long-term damage to our national security and foreign policy interests, and disrupt counterterrorism and national security partnerships. It would aid the propaganda effort of the Islamic State ("IS") and serve its recruitment message by feeding into the narrative that the United States is at war with Islam. It would hinder relationships with the very communities law enforcement professionals need to engage to address the threat. And apart from all of these concerns, the Ban offends our nation's laws and values.

In particular:

a. The Ban would disrupt critical counterterrorism, foreign policy, and national security partnerships that are critical to our obtaining the necessary information sharing and collaboration in intelligence, law enforcement, military, and diplomatic channels to address the threat posed by terrorist groups such as IS. The Ban would further strain our relationships with partner countries in Europe and the Middle East, on whom we rely for vital counterterrorism cooperation, undermining years of effort to bring them closer. By alienating these partners, we would frustrate access to the intelligence and resources necessary to fight the root causes of terror or disrupt attacks launched

from abroad, before an attack occurs within our borders.[9]

b. The Ban would endanger intelligence sources in the field. For current information, our intelligence officers may rely on human sources in some of the countries listed. The Ban breaches faith with those very sources, who have risked much or all to keep Americans safe—and whom our officers had promised always to protect with the full might of our government and our people.

c. The Ban would feed the recruitment narrative of IS and other extremists that portray the United States as at war with Islam. As government officials, we took every step we could to counter violent extremism. Because of the Ban's disparate impact on Muslim travelers and immigrants, it would fuel IS's narrative and sends the wrong message to the Muslim community here at home and all over the world: that the U.S. Government is hostile to them and their religion. The Ban also might endanger Christian communities, by handing IS a recruiting tool and propaganda victory that

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[9] Chad just withdrew hundreds of troops from a regional effort to fight against Boko Haram, two weeks after their communications minister said the new Proclamation "seriously undermines Chad's image and the good relations between the two countries, notably in the fight against terrorism." Conor Gaffey, *After Trump Travel Ban, Chad Pulls Troops From Boko Haram Fight in Niger*, Newsweek, October 13, 2017.

spreads their message that the United States is engaged in a religious war.

d. The Ban would disrupt ongoing law enforcement efforts. By alienating Muslim-American communities in the United States, it would harm our efforts to enlist their aid in identifying radicalized individuals who might launch attacks of the kind recently seen in San Bernadino and Orlando.

e. The Ban would have a devastating humanitarian impact. The current bans have already disrupted the movement of countless people, including women and children, who are fleeing danger and have been victimized by actual terrorists. Travelers face deep uncertainty about whether they may travel to or from the United States: for medical treatment, funerals or other pressing family reasons.

f. The Ban would cause serious economic damage to American citizens and residents. The Ban would affect many foreign travelers who annually inject hundreds of billions into the U.S. economy, supporting well over a million U.S. jobs. Affected companies have noted the adverse impact of the bans to date on many strategic economic sectors, including defense, technology, medicine, culture and others.

14. For all of the foregoing reasons, in our professional opinion, Travel Ban 3.0 does not further—but instead harms—sound U.S. national security and foreign policy. Issuing a new preliminary injunction

against Travel Ban 3.0 would not jeopardize national security. It would simply preserve the status quo ante, still requiring individuals to be subjected to all the rigorous legal vetting processes that are currently in place. Allowing the Ban to take effect would wreak havoc on innocent lives and deeply held American values.

15. Ours is a nation of immigrants, committed to the faith that we are all equal under the law and abhor discrimination, whether based on race, religion, sex, or national origin. As government officials, we sought diligently to protect our country, even while maintaining an immigration system as free as possible from discrimination, that applies no religious tests, and that measures individuals by their merits, not stereotypes of their countries or groups. Blanket bans of certain countries or classes of people are beneath the dignity of the nation and Constitution that we each took oaths to protect. Rebranding a proposal first advertised as a "Muslim Ban" as "Protecting the Nation from Foreign Terrorist Entry" or "Enhancing Vetting Capabilities and Processes" does not disguise the Ban's discriminatory intent, or make it necessary, effective, or faithful to America's Constitution, laws, or values.

Respectfully submitted,

/s/ **MADELINE K. ALBRIGHT**
/s/ **RAND BEERS**
/s/ **JOHN D. BELLINGER III**
/s/ **DANIEL BENJAMIN**
/s/ **ANTONY BLINKEN**
/s/ **JOHN O. BRENNAN**
/s/ **R. NICHOLAS BURNS**
/s/ **WILLIAM J. BURNS**

/s/ JAMES CLAPPER
/s/ DAVID S. COHEN
/s/ ELIOT A. COHEN
/s/ BATHSHEBA N. CROCKER
/s/ RYAN CROCKER
/s/ THOMAS DONILON
/s/ JEN EASTERLY
/s/ DANIEL FELDMAN
/s/ JONATHAN FINER
/s/ MICHÈLE FLOURNOY
/s/ ROBERT S. FORD
/s/ JOSH GELTZER
/s/ SUZY GEORGE
/s/ PHIL GORDON
/s/ CHUCK HAGEL
/s/ AVRIL D. HAINES
/s/ LUKE HARTIG
/s/ MICHAEL V. HAYDEN
/s/ HEATHER A. HIGGINBOTTOM
/s/ CHRISTOPHER R. HILL
/s/ JOHN F. KERRY
/s/ PREM KUMAR
/s/ RICHARD LUGAR
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/s/ SAMANTHA J. POWER
/s/ SUSAN E. RICE
/s/ ANNE C. RICHARD

/s/ **KORI SCHAKE**
/s/ **ERIC P. SCHWARTZ**
/s/ **WENDY R. SHERMAN**
/s/ **VIKRAM SINGH**
/s/ **JEFFREY H. SMITH**
/s/ **JAMES B. STEINBERG**
/s/ **WILLIAM WECHSLER**
/s/ **SAMUEL M. WITTEN**

Executed this 15th day of October, 2017

*All original signatures are on file with Harold Hongju Koh, Rule of Law Clinic, Yale Law School, New Haven, CT. 06520-8215 203-432-4932

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. No. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

[Filed: Mar. 15, 2017]

ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

On January 27, 2017, the President of the United States issued Executive Order No. 13,769 entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States." *See* 82 Fed. Reg. 8977 (Jan. 27, 2017). On March 6, 2017, the President issued another Executive Order, No. 13,780, identically entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States." (the "Executive Order"). *See* 82 Fed. Reg. 13209 (Mar. 6, 2017). The Executive Order revokes Executive Order No. 13,769 upon taking effect.[1] Exec. Order §§ 13, 14. Like its predecessor,

[1] By its terms, the Executive Order becomes effective as of March 16, 2017 at 12:01 a.m., Eastern Daylight Time—*i.e.*, March 15, 2017 at 6:01 p.m. Hawaii Time. Exec. Order § 14.

the Executive Order restricts the entry of foreign nationals from specified countries and suspends entrants from the United States refugee program for specified periods of time.

Plaintiffs State of Hawai'i ("State") and Ismail Elshikh, Ph.D. seek a nationwide temporary restraining order that would prohibit the Federal Defendants[2] from "enforcing or implementing Sections 2 and 6 of the Executive Order" before it takes effect. Pls.' Mot. for TRO 4, Mar. 8, 2017, ECF No. 65.[3] Upon evaluation of the parties' submissions, and following a hearing on March 15, 2017, the Court concludes that, on the record before it, Plaintiffs have met their burden of establishing a strong likelihood of success on the merits of their Establishment Clause claim, that irreparable injury is likely if the requested relief is not issued, and that the balance of the equities and public interest counsel in favor of granting the requested relief. Accordingly, Plaintiffs' Motion for TRO (ECF. No. 65) is granted for the reasons detailed below.

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[2] Defendants in the instant action are: Donald J. Trump, in his official capacity as President of the United States; the U.S. Department of Homeland Security ("DHS"); John F. Kelly, in his official capacity as Secretary of DHS; the U.S. Department of State; Rex Tillerson, in his official capacity as Secretary of State; and the United States of America.

[3] Plaintiffs filed a Second Amended Complaint for Declaratory and Injunctive Relief ("SAC") on March 8, 2017 simultaneous with their Motion for TRO. SAC, ECF. No. 64.

BACKGROUND

I. The President's Executive Orders

A. Executive Order No. 13,769

Executive Order No. 13,769 became effective upon signing on January 27, 2017. *See* 82 Fed. Reg. 8977. It inspired several lawsuits across the nation in the days that followed.[4] Among those lawsuits was this one: On February 3, 2017, the State filed its complaint and an initial motion for TRO, which sought to enjoin, nationwide, Sections 3(c), 5(a)-(c), and 5(e) of Executive Order No. 13,769. Pls.' Mot. for TRO, Feb. 3, 2017, ECF No. 2.

This Court did not rule on the State's initial TRO motion because later that same day, the United States District Court for the Western District of Washington entered a nationwide preliminary injunction enjoining the Government from enforcing the same provisions of Executive Order No. 13,769 targeted by the State here. *See Washington v. Trump*, 2017 WL 462040. As such, the Court stayed this case, effective February 7, 2017,

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[4] *See, e.g., Mohammed v. United States*, No. 2:17-cv-00786-AB-PLA (C.D. Cal. Jan. 31, 2017); *City & Cty. of San Francisco v. Trump*, No. 3:17-cv-00485-WHO (N.D. Cal. Jan. 31, 2017); *Louhghalam v. Trump*, Civil Action No. 17-cv-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Int'l Refugee Assistance Project v. Trump*, No. 8:17-0361-TDC (D. Md. filed Feb. 7, 2017); *Darweesh v. Trump*, 17 Civ. 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017); *Aziz v. Trump*, --- F. Supp. 3d ----, 2017 WL 580855 (E.D. Va. Feb. 13, 2017); *Washington v. Trump*, Case No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), *emergency stay denied*, 847 F.3d 1151 (9th Cir. 2017). This list is not exhaustive.

specifying that the stay would continue "[a]s long as the February 3, 2017 injunction entered in *Washington v. Trump* remain[ed] in full force and effect . . . or until further order of this Court." ECF Nos. 31 & 32.

On February 4, 2017, the Government filed an emergency motion in the Ninth Circuit Court of Appeals seeking a stay of the *Washington* TRO, pending appeal.[5] *See Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 4, 2017). The Ninth Circuit heard oral argument on February 7, after which it denied the emergency motion via written Order dated February 9, 2017. *See* Case No. 17-35105, ECF Nos. 125 (Tr. of Hr'g), 134 (Filed Order for Publication at 847 F.3d 1151).

On March 8, 2017, the Ninth Circuit granted the Government's unopposed motion to voluntarily dismiss the appeal. *See* Order, No. 17-35105 (9th Cir. Mar. 8, 2017), ECF No. 187. As a result, the same sections of Executive Order No. 13,769 initially challenged by the State in the instant action remain enjoined as of the date of this Order.

B. The New Executive Order

Section 2 of the new Executive Order suspends from "entry into the United States" for a period of 90 days, certain nationals of six countries referred to in Section 217(a)(12) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*: Iran, Libya, Somalia,

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[5] The Government also requested "an immediate administrative stay pending full consideration of the emergency motion for a stay pending appeal" on February 4, 2017 (Emergency Mot. to Stay, No. 17-35105 (9th Cir.), ECF No. 14), which the Ninth Circuit panel swiftly denied (Order, No. 17-35105 (9th Cir.), ECF No. 15).

Sudan, Syria, and Yemen.[6] 8 U.S.C. § 1187(a)(12); Exec. Order § 2(c). The suspension of entry applies to nationals of these six countries who (1) are outside the United States on the new Executive Order's effective date of March 16, 2017; (2) do not have a valid visa on that date, and (3) did not have a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017 (the date of the prior Executive Order, No. 13,769). Exec. Order § 3(a).

The 90-day suspension does not apply to: (1) lawful permanent residents; (2) any foreign national admitted to or paroled into the United States on or after the Executive Order's effective date (March 16, 2017); (3) any individual who has a document other than a visa, valid on the effective date of the Executive Order or issued anytime thereafter, that permits travel to the United States, such as an advance parole document; (4) any dual national traveling on a passport not issued by one of the six listed countries; (5) any foreign national traveling on a diplomatic-type or other specified visa; and (6) any foreign national who has been granted asylum, any refugee already admitted to the United States, or any individual granted withholding of removal, advance parole, or protection under the Convention Against Torture. *See* Exec. Order § 3(b).

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[6] Because of the "close cooperative relationship" between the United States and the Iraqi government, the Executive Order declares that Iraq no longer merits inclusion in this list of countries, as it was in Executive Order No. 13,769. Iraq "presents a special case." Exec. Order § 1(g).

Under Section 3(c)'s waiver provision, foreign nationals of the six countries who are subject to the suspension of entry may nonetheless seek entry on a case-by-case basis. The Executive Order includes the following list of circumstances when such waivers "could be appropriate:"

> (i) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other longterm activity, is outside the United States on the effective date of the Order, seeks to reenter the United States to resume that activity, and denial of reentry during the suspension period would impair that activity;
>
> (ii) the foreign national has previously established significant contacts with the United States but is outside the United States on the effective date of the Order for work, study, or other lawful activity;
>
> (iii) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;
>
> (iv) the foreign national seeks to enter the United States to visit a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;
>
> (v) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical

care, or someone whose entry is otherwise justified by the special circumstances of the case;

(vi) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States Government;

(vii) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOAI), 22 U.S.C. § 288 et seq., traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under IOIA;

(viii) the foreign national is a landed Canadian immigrant who applies for admission at a land border port of entry or a preclearance location located in Canada; or

(ix) the foreign national is traveling as a United States Government sponsored exchange visitor.

Exec. Order § 3(c).

Section 6 of the Executive Order suspends the U.S. Refugee Admissions Program for 120 days. The suspension applies both to travel into the United States and to decisions on applications for refugee status for the same period. *See* Exec. Order § 6(a). It excludes refugee applicants who were formally scheduled for transit by the Department of State before the March 16,

2017 effective date. Like the 90-day suspension, the 120-day suspension includes a waiver provision that allows the Secretaries of State and DHS to admit refugee applicants on a case-by-case basis. *See* Exec. Order § 6(c). The Executive Order identifies examples of circumstances in which waivers may be warranted, including: where the admission of the individual would allow the United States to conform its conduct to a pre-existing international agreement or denying admission would cause undue hardship. Exec. Order § 6(c). Unlike Executive Order No. 13,769, the new Executive Order does not expressly refer to an individual's status as a "religious minority" or refer to any particular religion, and it does not include a Syria-specific ban on refugees.

Section 1 states that the purpose of the Executive Order is to "protect [United States] citizens from terrorist attacks, including those committed by foreign nationals." Section 1(h) identifies two examples of terrorism-related crimes committed in the United States by persons entering the country either "legally on visas" or "as refugees":

> [1] In January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses. [2] [I]n October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction[.]

Exec. Order § 1(h).

By its terms, the Executive Order also represents a response to the Ninth Circuit's decision in *Washington v. Trump*. *See* 847 F.3d 1151. According to the Government, it "clarifies and narrows the scope of Executive action regarding immigration, extinguishes the need for emergent consideration, and eliminates the potential constitutional concerns identified by the Ninth Circuit." *See* Notice of Filing of Executive Order 4-5, ECF No. 56.

It is with this backdrop that we turn to consideration of Plaintiffs' restraining order application.

II. Plaintiffs' Motion For TRO

Plaintiffs' Second Amended Complaint (ECF No. 64) and Motion for TRO (ECF No. 65) contend that portions of the new Executive Order suffer from the same infirmities as those provisions of Executive Order No. 13,769 enjoined in *Washington*, 847 F.3d 1151. Once more, the State asserts that the Executive Order inflicts constitutional and statutory injuries upon its residents, employers, and educational institutions, while Dr. Elshikh alleges injuries on behalf of himself, his family, and members of his Mosque. SAC ¶ 1.

Plaintiffs allege that the Executive Order subjects portions of the State's population, including Dr. Elshikh and his family, to discrimination in violation of both the Constitution and the INA, denying them their right, among other things, to associate with family members overseas on the basis of their religion and national origin. The State purports that the Executive Order has injured its institutions, economy, and sovereign

interest in maintaining the separation between church and state. SAC ¶¶ 4-5.

According to Plaintiffs, the Executive order also results in "their having to live in a country and in a State where there is the perception that the Government has established a disfavored religion." SAC ¶ 5. Plaintiffs assert that by singling out nationals from the six predominantly Muslim countries, the Executive Order causes harm by stigmatizing not only immigrants and refugees, but also Muslim citizens of the United States. Plaintiffs point to public statements by the President and his advisors regarding the implementation of a "Muslim ban," which Plaintiffs contend is the tacit and illegitimate motivation underlying the Executive Order. *See* SAC ¶¶ 35-51. For example, Plaintiffs point to the following statements made contemporaneously with the implementation of Executive Order No. 13,769 and in its immediate aftermath:

> 48. In an interview on January 25, 2017, Mr. Trump discussed his plans to implement "extreme vetting" of people seeking entry into the United States. He remarked: "[N]o, it's not the Muslim ban. But it's countries that have tremendous terror. . . . [I]t's countries that people are going to come in and cause us tremendous problems."
>
> 49. Two days later, on January 27, 2017, President Trump signed an Executive Order entitled, "Protecting the Nation From Foreign Terrorist Entry into the United States."
>
> 50. The first Executive Order [No. 13,769] was issued without a notice and comment period and

without interagency review. Moreover, the first Executive Order was issued with little explanation of how it could further its stated objective.

51. When signing the first Executive Order [No. 13,769], President Trump read the title, looked up, and said: "We all know what that means." President Trump said he was "establishing a new vetting measure to keep radical Islamic terrorists out of the United States of America," and that: "We don't want them here."

. . . .

58. In a January 27, 2017 interview with Christian Broadcasting Network, President Trump said that persecuted Christians would be given priority under the first Executive Order. He said (once again, falsely): "Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair, everybody was persecuted in all fairness, but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair. So we are going to help them."

59. The day after signing the first Executive Order [No. 13,769], President Trump's advisor, Rudolph Giuliani, explained on television how the Executive Order came to be. He said: "When [Mr. Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"

> 60. The President and his spokespersons defended the rushed nature of their issuance of the first Executive Order [No. 13,769] on January 27, 2017, by saying that their urgency was imperative to stop the inflow of dangerous persons to the United States. On January 30, 2017, President Trump tweeted: "If the ban were announced with a one week notice, the 'bad' would rush into our country during that week." In a forum on January 30, 2017 at George Washington University, White House spokesman Sean Spicer said: "At the end of the day, what was the other option? To rush it out quickly, telegraph it five days so that people could rush into this country and undermine the safety of our nation?" On February 9, 2017, President Trump claimed he had sought a one-month delay between signing and implementation, but was told by his advisors that "you can't do that because then people are gonna pour in before the toughness."

SAC ¶¶ 48-51, 58-60 (footnotes and citations omitted).

Plaintiffs also highlight statements by members of the Administration prior to the signing of the new Executive Order, seeking to tie its content to Executive Order No. 13,769 enjoined by the *Washington* TRO. In particular, they note that:

> On February 21, Senior Advisor to the President, Stephen Miller, told Fox News that the new travel ban would have the same effect as the old one. He said: "Fundamentally, you're still going to have the same basic policy outcome for the country, but you're going to be responsive to a lot of very technical issues that were brought up by the court and

> those will be addressed. But in terms of protecting the country, those basic policies are still going to be in effect."

SAC ¶ 74(a) (citing *Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start, The First 100 Days* (Fox News television broadcast Feb. 21, 2017), transcript *available at* https://goo.gl/wcHvHH (rush transcript)). Plaintiffs argue that, in light of these and similar statements "where the President himself has repeatedly and publicly espoused an improper motive for his actions, the President's action must be invalidated." Pls.' Mem. in Supp. of Mot. for TRO 2, ECF No. 65-1.

In addition to these accounts, Plaintiffs describe a draft report from the DHS, which they contend undermines the purported national security rationale for the Executive Order. *See* SAC ¶ 61 (citing SAC, Ex. 10, ECF No. 64-10). The February 24, 2017 draft report states that citizenship is an "unlikely indicator" of terrorism threats against the United States and that very few individuals from the seven countries included in Executive Order No. 13,769 had carried out or attempted to carry out terrorism activities in the United States. SAC ¶ 61 (citing SAC, Ex. 10, ECF No. 64-10). According to Plaintiffs, this and other evidence demonstrates the Administration's pretextual justification for the Executive Order.

Plaintiffs assert the following causes of action: (1) violation of the Establishment Clause of the First Amendment (Count I); (2) violation of the equal protection guarantees of the Fifth Amendment's Due Process

Clause on the basis of religion, national origin, nationality, or alienage (Count II); (3) violation of the Due Process Clause of the Fifth Amendment based upon substantive due process rights (Count III); (4) violation of the procedural due process guarantees of the Fifth Amendment (Count IV); (5) violation of the INA due to discrimination on the basis of nationality, and exceeding the President's authority under Sections 1182(f) and 1185(a) (Count V); (6) substantially burdening the exercise of religion in violation of the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 200bb-1(a) (Count VI); (7) substantive violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706 (2)(A)-(C), through violations of the Constitution, INA, and RFRA (Count VII); and (8) procedural violation of the APA, 5 U.S.C. § 706 (2)(D) (Count VIII).

Plaintiffs contend that these alleged violations of law have caused and continue to cause them irreparable injury. To that end, through their Motion for TRO, Plaintiffs seek to temporarily enjoin Defendants from enforcing and implementing Sections 2 and 6 of the Executive Order. Mot. for TRO 4, ECF No. 65. They argue that "both of these sections are unlawful in all of their applications:" Section 2 discriminates on the basis of nationality, Sections 2 and 6 exceed the President's authority under 8 U.S.C. §§ 1182(f) and 1185(a), and both provisions are motivated by anti-Muslim animus. TRO Mem. 50, Dkt. No. 65-1. Moreover, Plaintiffs assert that both sections infringe "on the 'due process rights' of numerous U.S. citizens and institutions by barring the entry of non-citizens with whom they have

close relationships." TRO Mem. 50 (quoting *Washington*, 847 F.3d at 1166).

Defendants oppose the Motion for TRO. The Court held a hearing on the matter on March 15, 2017, before the Executive Order was scheduled to take effect.

DISCUSSION

I. Plaintiffs Have Demonstrated Standing At This Preliminary Phase

A. Article III Standing

Article III, Section 2 of the Constitution permits federal courts to consider only "cases" and "controversies." *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "Those two words confine 'the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process.'" *Id.* (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

"At bottom, 'the gist of the question of standing' is whether petitioners have 'such a personal stake in the outcome of the controversy as to assure that concrete

adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.'" *Catholic League for Religious & Civil Rights v. City & Cty. of San Francisco*, 624 F.3d 1043, 1048 (9th Cir. 2010) (en banc) (quoting *Massachusetts*, 549 U.S. at 517)).

"At this very preliminary stage of the litigation, the [Plaintiffs] may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their TRO motion to meet their burden." *Washington*, 847 F.3d at 1159 (citing *Lujan*, 504 U.S. at 561). "With these allegations and evidence, the [Plaintiffs] must make a 'clear showing of each element of standing.'" *Id.* (quoting *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 907 (2014)). At this preliminary stage of the proceedings, on the record presented, Plaintiffs meet the threshold Article III standing requirements.

B. The State Has Standing

The State alleges standing based both upon injuries to its proprietary interests and to its quasi-sovereign interests, *i.e.*, in its role as *parens patriae*.[7] Just as

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[7] The State's *parens patriae* theory focuses on the Executive Order

> subject[ing] citizens of Hawai'i like Dr. Elshikh to discrimination and marginalization while denying all residents of the State the benefits of a pluralistic and inclusive society. Hawai'i has a quasi-sovereign interest in 'securing [its] residents from the harmful effects of discrimination.' *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 609 (1982). The [Executive] Order also harms Hawai'i by debasing its culture and tradition of ethnic diversity and inclusion.

the Ninth Circuit panel in *Washington* concluded on a similar record that the alleged harms to the states' proprietary interests as operators of their public universities were sufficient to support standing, the Court concludes likewise here. The Court does not reach the State's alternative standing theory based on the protection of the interests of its citizens as *parens patriae*. *See Washington*, 847 F.3d at 1168 n.5 ("The States have asserted other proprietary interests and also presented an alternative standing theory based on their ability to advance the interests of their citizens as *parens patriae*. Because we conclude that the States' proprietary interests as operators of their public universities are sufficient to support standing, we need not reach those arguments.").

Hawaii primarily asserts two proprietary injuries stemming from the Executive Order. First, the State alleges the impacts that the Executive Order will have on the University of Hawaii system, both financial and intangible. The University is an arm of the State. *See* Haw. Const. art. 10, §§ 5, 6; Haw. Rev. Stat. ("HRS") § 304A-103. The University recruits students, permanent faculty, and visiting faculty from the targeted countries. *See, e.g.*, Suppl. Decl. of Risa E. Dickson ¶¶ 6-8, Mot. for TRO, Ex. D-1, ECF No. 66-6. Students or faculty suspended from entry are deterred from studying or teaching at the University, now and in the future, irrevocably damaging their personal and professional lives and harming the educational institutions themselves. *See id.*

TRO Mem. 48, ECF No. 65-1.

There is also evidence of a financial impact from the Executive Order on the University system. The University recruits from the six affected countries. It currently has twenty-three graduate students, several permanent faculty members, and twenty-nine visiting faculty members from the six countries listed. Suppl. Dickson Decl. ¶ 7. The State contends that any prospective recruits who are without visas as of March 16, 2017 will not be able to travel to Hawaii to attend the University. As a result, the University will not be able to collect the tuition that those students would have paid. Suppl. Dickson Decl. ¶ 8 ("Individuals who are neither legal permanent residents nor current visa holders will be entirely precluded from considering our institution."). These individuals' spouses, parents, and children likewise would be unable to join them in the United States. The State asserts that the Executive Order also risks "dissuad[ing] some of [the University's] current professors or scholars from continuing their scholarship in the United States and at [the University]." Suppl. Dickson Decl. ¶ 9.

The State argues that the University will also suffer non-monetary losses, including damage to the collaborative exchange of ideas among people of different religions and national backgrounds on which the State's educational institutions depend. Suppl. Dickson Decl. ¶¶ 9-10, ECF no. 66-6; *see also* Original Dickson Decl. ¶ 13, Mot. for TRO, Ex. D-2, ECF, 66-7; SAC ¶ 94. This will impair the University's ability to recruit and accept the most qualified students and faculty, undermine its commitment to being "one of the most diverse institutions of higher education" in the world, Suppl.

Dickson Decl. ¶ 11, and grind to a halt certain academic programs, including the University's Persian Language and Culture program, *id.* ¶ 8. *Cf. Washington*, 847 F.3d at 1160 ("[The universities] have a mission of 'global engagement' and rely on such visiting students, scholars, and faculty to advance their educational goals.").

These types of injuries are nearly indistinguishable from those found to support standing in the Ninth Circuit's decision in *Washington*. *See* 847 F.3d at 1161 ("The necessary connection can be drawn in at most two logical steps: (1) the Executive Order prevents nationals of seven countries from entering Washington and Minnesota; (2) as a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave. And we have no difficulty concluding that the States' injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution and an injunction barring its enforcement.").

The second proprietary injury alleged Hawaii alleges is to the State's main economic driver: tourism. The State contends that the Executive Order will "have the effect of depressing international travel to and tourism in Hawai'i," which "directly harms Hawaii's businesses and, in turn, the State's revenue." SAC ¶ 100, ECF No. 64. *See also* Suppl. Decl. of Luis P. Salaveria ¶¶ 6-10, Mot. for TRO, Ex. C-1, ECF No. 66-4 ("I expect, given the uncertainty the new executive order and its predecessor have caused to international travel generally, that these changing policies may depress tourism, business

travel, and financial investments in Hawaii."). The State points to preliminary data from the Hawaii Tourism Authority, which suggests that during the interval of time that the first Executive Order was in place, the number of visitors to Hawai'i from the Middle East dropped (data including visitors from Iran, Iraq, Syria and Yemen). *See* Suppl. Decl. of George Szigeti, ¶¶ 5-8, Mot. for TRO, Ex. B-1, ECF No. 66-2; *see also* SAC ¶ 100 (identifying 278 visitors in January 2017, compared to 348 visitors from that same region in January 2016).[8] Tourism accounted for $15 billion in spending in 2015, and a decline in tourism has a direct effect on the State's revenue. *See* SAC ¶ 18. Because there is preliminary evidence that losses of current and future revenue are traceable to the Executive Order, this injury to the State's proprietary interest also appears sufficient to confer standing. *Cf. Texas v. United States*, 809 F.3d 134, 155-56 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (holding that the "financial loss[es]" that Texas would bear, due to having to grant drivers licenses, constituted a concrete and immediate injury for standing purposes).

For purposes of the instant Motion for TRO, the State has preliminarily demonstrated that: (1) its universities will suffer monetary damages and intangible

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[8] This data relates to the prior Executive Order No. 13,769. At this preliminary stage, the Court looks to the earlier order's effect on tourism in order to gauge the economic impact of the new Executive Order, while understanding that the provisions of the two differ. Because the new Executive Order has yet to take effect, its precise economic impact cannot presently be determined.

harms; (2) the State's economy is likely to suffer a loss of revenue due to a decline in tourism; (3) such harms can be sufficiently linked to the Executive Order; and (4) the State would not suffer the harms to its proprietary interests in the absence of implementation of the Executive Order. Accordingly, at this early stage of the litigation, the State has satisfied the requirements of Article III standing.[9]

C. **Dr. Elshikh Has Standing**

Dr. Elshikh is an American citizen of Egyptian descent and has been a resident of Hawai'i for over a decade. Declaration of Ismail Elshikh ¶ 1, Mot. for TRO, Ex. A, ECF No. 66-1. He is the Imam of the Muslim Association of Hawai'i and a leader within Hawaii's Islamic community. Elshikh Decl. ¶ 2. Dr. Elshikh's wife is of Syrian descent, and their young children are American citizens. Dr. Elshikh and his family are Muslim. Elshikh Decl. ¶¶ 1, 3. His mother-in-law, also Muslim, is a Syrian national without a visa,

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[9] To the extent the Government argues that the State does not have standing to bring an Establishment Clause violation on its own behalf, the Court does not reach this argument. *Cf. Washington*, 847 F.3d at 1160 n.4 ("The Government argues that the States may not bring Establishment Clause claims because they lack Establishment Clause rights. Even if we assume that States lack such rights, an issue we need not decide, that is irrelevant in this case because the States are asserting the rights of their students and professors. Male doctors do not have personal rights in abortion and yet any physician may assert those rights on behalf of his female patients." (citing *Singleton v. Wulff*, 428 U.S. 106, 118 (1976))). Unlike in *Washington* where there was no individual plaintiff, Dr. Elshikh has standing to assert an Establishment Clause violation, as discussed herein.

who last visited the family in Hawaii in 2005. Elshikh Decl. ¶¶ 4-5.

In September 2015, Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother. On January 31, 2017, Dr. Elshikh called the National Visa Center and learned that his mother-in-law's visa application had been put on hold and would not proceed to the next stage of the process because of the implementation of Executive Order No. 13,769. Elshikh Decl. ¶ 4. Thereafter, on March 2, 2017, during the pendency of the nationwide injunction imposed by *Washington*, Dr. Elshikh received an email from the National Visa Center advising that his mother-in-law's visa application had progressed to the next stage and that her interview would be scheduled at an embassy overseas. Although no date was given, the communication stated that most interviews occur within three months. Elshikh Decl. ¶ 4. Dr. Elshikh fears that although she has made progress toward obtaining a visa, his mother-in-law will be unable to enter the country if the new Executive Order is implemented. Elshikh Decl. ¶ 4. According to Plaintiffs, despite her pending visa application, Dr. Elshikh's mother-in-law would be barred in the short-term from entering the United States under the terms of Section 2(c) of the Executive Order, unless she is granted a waiver, because she is not a current visa holder.

Dr. Elshikh has standing to assert his claims, including an Establishment Clause violation. Courts observe that the injury-in-fact prerequisite can be "particularly elusive" in Establishment Clause cases because plaintiffs do not typically allege an invasion of a physical or

economic interest. Despite that, a plaintiff may nonetheless show an injury that is sufficiently concrete, particularized, and actual to confer standing. *See Catholic League*, 624 F.3d at 1048-49; *Vasquez v. Los Angeles Cty.*, 487 F.3d 1246, 1250 (9th Cir. 2007) ("The concept of a 'concrete' injury is particularly elusive in the Establishment Clause context."). "The standing question, in plain English, is whether adherents to a religion have standing to challenge an official condemnation by their government of their religious views[.] Their 'personal stake' assures the 'concrete adverseness' required." *Catholic League*, 624 F.3d at 1048-49. In Establishment Clause cases—

> [e]ndorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message." Plaintiffs aver that not only does the resolution make them feel like second-class citizens, but that their participation in the political community will be chilled by the [government's] hostility to their church and their religion.

Id. at 1048-49 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). Dr. Elshikh attests that he and his family suffer just such injuries here. He declares that the effects of the Executive Order are "devastating to me, my wife and children." Elshikh Decl. ¶ 6, ECF No. 66-1.

Like his children, Dr. Elshikh is "deeply saddened by the message that [both Executive Orders] convey—that a broad travel-ban is 'needed' to prevent people

from certain Muslim countries from entering the United States." Elshikh Decl. ¶ 1 ("Because of my allegiance to America, and my deep belief in the American ideals of democracy and equality, I am deeply saddened by the passage of the Executive Order barring nationals from now-six Muslim majority countries from entering the United States."); *id.* ¶ 3 (["My children] are deeply affected by the knowledge that the United States—their own country—would discriminate against individuals who are of the same ethnicity as them, including members of their own family, and who hold the same religious beliefs. They do not fully understand why this is happening, but they feel hurt, confused, and sad.").

"Muslims in the Hawai'i Islamic community feel that the new Executive Order targets Muslim citizens because of their religious views and national origin. Dr. Elshikh believes that, as a result of the new Executive Order, he and members of the Mosque will not be able to associate as freely with those of other faiths." SAC ¶ 90. These injuries are sufficiently personal, concrete, particularized, and actual to confer standing in the Establishment Clause context.

The final two aspects of Article III standing—causation and redressability—are also satisfied. Dr. Elshikh's injuries are traceable to the new Executive Order and, if Plaintiffs prevail, a decision enjoining portions of the Executive Order would redress that injury. *See Catholic League*, 624 F.3d at 1053. At this preliminary stage of the litigation, Dr. Elshikh has accordingly carried his burden to establish standing under Article III.

II. Ripeness

"While standing is primarily concerned with who is a proper party to litigate a particular matter, ripeness addresses when litigation may occur." *Lee v. Oregon*, 107 F.3d 1382, 1387 (9th Cir. 1997). "[I]n many cases, ripeness coincides squarely with standing's injury in fact prong." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). In fact, the ripeness inquiry is often "characterized as standing on a timeline." *Id.* "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)).

The Government argues that "the only concrete injury Elshikh alleges is that the Order 'will prevent [his] mother-in-law'—a Syrian national who lacks a visa—from visiting Elshikh and his family in Hawaii." These claims are not ripe, according to the Government, because there is a visa waiver process that Elshikh's mother-in-law has yet to even initiate. Govt. Mem. in Opp'n to Mot. for TRO (citing SAC ¶ 85), ECF No. 145.

The Government's premise is not true. Dr. Elshikh alleges direct, concrete injuries to both himself and his immediate family that are independent of his mother-in-law's visa status. *See, e.g.*, SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3.[10] These alleged injuries have already

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[10] There is no dispute that Dr. Elshikh's mother-in-law does not currently possess a valid visa, would be barred from entering as a Syrian national by Section 2(c) of the Executive Order, and has not

occurred and will continue to occur once the Executive Order is implemented and enforced—the injuries are not contingent ones. *Cf. 281 Care Comm. v. Arneson*, 638 F.3d 621, 631 (8th Cir. 2011) ("Plaintiffs' alleged injury is not based on speculation about a particular future prosecution or the defeat of a particular ballot question. . . . Here, the issue presented requires no further factual development, is largely a legal question, and chills allegedly protected First Amendment expression."); *see also Arizona Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003) ("[W]hen the threatened enforcement effort implicates First Amendment [free speech] rights, the inquiry tilts dramatically toward a finding of standing.").

The Court turns to the merits of Plaintiffs' Motion for TRO.

III. Legal Standard: Preliminary Injunctive Relief

The underlying purpose of a TRO is to preserve the status quo and prevent irreparable harm before a preliminary injunction hearing is held. *Granny Goose Foods*, 415 U.S. 423, 439 (1974); *see also Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006).

The standard for issuing a temporary restraining order is substantially identical to the standard for issuing

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yet applied for a waiver under Section 3(c) of the Executive Order. Since the Executive Order is not yet effective, it is difficult to see how she could. None of these propositions, however, alter the Court's finding that Dr. Elshikh has sufficiently established, at this preliminary stage, that he has suffered an injury-in-fact separate and apart from his mother-in-law that is sufficiently concrete, particularized, and actual to confer standing.

a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citation omitted).

"[I]f a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the other two *Winter* factors are satisfied." *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (emphasis by *Shell Offshore*)).

For the reasons that follow, Plaintiffs have met this burden here.

IV. Analysis of TRO Factors: Likelihood of Success on the Merits

The Court turns to whether Plaintiffs sufficiently establish a likelihood of success on the merits of their Count I claim that the Executive Order violates the Establishment Clause of the First Amendment. Because a reasonable, objective observer—enlightened by the specific historical context, contemporaneous public statements, and specific sequence of events leading to its issuance—would conclude that the Executive Order

was issued with a purpose to disfavor a particular religion, in spite of its stated, religiously-neutral purpose, the Court finds that Plaintiffs, and Dr. Elshikh in particular, are likely to succeed on the merits of their Establishment Clause claim.[11]

A. Establishment Clause

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). To determine whether the Executive Order runs afoul of that command, the Court is guided by the three-part test for Establishment Clause claims set forth in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). According to *Lemon*, government action (1) must have a primary secular purpose, (2) may not have the principal effect of advancing or inhibiting religion, and (3) may not foster excessive entanglement with religion. *Id.* "Failure to satisfy any one of the three prongs of the *Lemon* test is sufficient to invalidate the challenged law or practice." *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1076-77 (9th Cir. 2010). Because the Executive Order at issue here cannot survive the secular purpose prong, the Court does not reach the balance of the criteria. *See id.* (noting that it is unnecessary to reach the second or third *Lemon* criteria if the challenged law or practice fails the first test).

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[11] The Court expresses no views on Plaintiffs' due-process or INA-based statutory claims.

B. The Executive Order's Primary Purpose

It is undisputed that the Executive Order does not facially discriminate for or against any particular religion, or for or against religion versus non-religion. There is no express reference, for instance, to any religion nor does the Executive Order—unlike its predecessor—contain any term or phrase that can be reasonably characterized as having a religious origin or connotation.

Indeed, the Government defends the Executive Order principally because of its religiously neutral text—"[i]t applies to six countries that Congress and the prior Administration determined posed special risks of terrorism. [The Executive Order] applies to *all* individuals in those countries, regardless of their religion." Gov't. Mem. in Opp'n 40. The Government does not stop there. By its reading, the Executive Order could not have been religiously motivated because "the six countries represent only a small fraction of the world's 50 Muslim-majority nations, and are home to less than 9% of the global Muslim population . . . [T]he suspension covers *every* national of those countries, including millions of non-Muslim individuals[.]" Gov't. Mem. in Opp'n 42.

The illogic of the Government's contentions is palpable. The notion that one can demonstrate animus toward any group of people only by targeting all of them at once is fundamentally flawed. The Court declines to relegate its Establishment Clause analysis to a purely mathematical exercise. *See Aziz*, 2017 WL 580855, at *9 (rejecting the argument that "the Court cannot infer an anti-Muslim animus because [Executive

Order No. 13,769] does not affect all, or even most, Muslims," because "the Supreme Court has never reduced its Establishment Clause jurisprudence to a mathematical exercise. It is a discriminatory purpose that matters, no matter how inefficient the execution" (citation omitted)). Equally flawed is the notion that the Executive Order cannot be found to have targeted Islam because it applies to *all individuals* in the six referenced countries. It is undisputed, using the primary source upon which the Government itself relies, that these six countries have overwhelmingly Muslim populations that range from 90.7% to 99.8%.[12] It would therefore be no paradigmatic leap to conclude that targeting these countries likewise targets Islam. Certainly, it would be inappropriate to conclude, as the Government does, that it does not.

The Government compounds these shortcomings by suggesting that the Executive Order's neutral text is what this Court must rely on to evaluate purpose. Govt. Mem. in Opp'n at 42-43 ("[C]ourts may not 'look behind the exercise of [Executive] discretion' taken 'on the basis of a facially legitimate and bona fide reason.'"). Only a few weeks ago, the Ninth Circuit commanded otherwise: "It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims." *Washington*, 847 F.3d at 1167-68 (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) ("Official

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[12] *See* Pew-Templeton Global Religious Futures Project, Muslim Population by Country (2010), *available at* http://www.globalreligiousfutures.org/religions/muslims.

action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality."); *Larson*, 456 U.S. at 254-55 (holding that a facially neutral statute violated the Establishment Clause in light of legislative history demonstrating an intent to apply regulations only to minority religions); and *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977) (explaining that circumstantial evidence of intent, including the historical background of the decision and statements by decisionmakers, may be considered in evaluating whether a governmental action was motivated by a discriminatory purpose)). The Supreme Court has been even more emphatic: courts may not "turn a blind eye to the context in which [a] policy arose." *McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 (2005) (citation and quotation signals omitted).[13] "[H]istorical context and 'the specific sequence of events leading up to'" the adoption of a challenged policy are relevant considerations. *Id.* at 862; *see also Aziz*, 2017 WL 580855, at *7.

A review of the historical background here makes plain why the Government wishes to focus on the Executive Order's text, rather than its context. The record before this Court is unique. It includes significant and unrebutted evidence of religious animus driving the promulgation of the Executive Order and its related predecessor. For example—

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[13] In *McCreary*, the Supreme Court examined whether the posting of successive Ten Commandments displays at two county courthouses violated the Establishment Clause. 545 U.S. at 850-82.

> In March 2016, Mr. Trump said, during an interview, "I think Islam hates us." Mr. Trump was asked, "Is there a war between the West and radical Islam, or between the West and Islam itself?" He replied: "It's very hard to separate. Because you don't know who's who."

SAC ¶ 41 (citing *Anderson Cooper 360 Degrees: Exclusive Interview With Donald Trump* (CNN television broadcast Mar. 9, 2016, 8:00 PM ET), transcript *available at* https://goo.gl/y7s2kQ)). In that same interview, Mr. Trump stated: "But there's a tremendous hatred. And we have to be very vigilant. We have to be very careful. And we can't allow people coming into this country who have this hatred of the United States . . . [a]nd of people that are not Muslim."

Plaintiffs allege that "[l]ater, as the presumptive Republican nominee, Mr. Trump began using facially neutral language, at times, to describe the Muslim ban." SAC ¶ 42. For example, they point to a July 24, 2016 interview:

> Mr. Trump was asked: "The Muslim ban. I think you've pulled back from it, but you tell me." Mr. Trump responded: "I don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. People were so upset when I used the word Muslim. Oh, you can't use the word Muslim. Remember this. And I'm okay with that, because I'm talking territory instead of Muslim."

SAC ¶ 44; Ex. 7 (*Meet the Press* (NBC television broadcast July 24, 2016), transcript *available at* https://goo.gl/

jHc6aU). And during an October 9, 2016 televised presidential debate, Mr. Trump was asked:

> "Your running mate said this week that the Muslim ban is no longer your position. Is that correct? And if it is, was it a mistake to have a religious test?" Mr. Trump replied: "The Muslim ban is something that in some form has morphed into a[n] extreme vetting from certain areas of the world." When asked to clarify whether "the Muslim ban still stands," Mr. Trump said, "It's called extreme vetting."

SAC ¶ 45 (citing The American Presidency Project, *Presidential Debates: Presidential Debate at Washington University in St. Louis, Missouri* (Oct. 9, 2016), *available at* https://goo.gl/iIzf0A)).

The Government appropriately cautions that, in determining purpose, courts should not look into the "veiled psyche" and "secret motives" of government decisionmakers and may not undertake a "judicial psychoanalysis of a drafter's heart of hearts." Govt. Opp'n at 40 (citing *McCreary*, 545 U.S. at 862). The Government need not fear. The remarkable facts at issue here require no such impermissible inquiry. For instance, there is nothing "*veiled*" about this press release: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States.[]" SAC ¶ 38, Ex. 6 (Press Release, Donald J. Trump for President, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), *available at* https://goo.gl/D3OdJJ)). Nor is there anything "*secret*" about the Executive's motive specific to the issuance of the Executive Order:

> Rudolph Giuliani explained on television how the Executive Order came to be. He said: "When [Mr. Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"

SAC ¶ 59, Ex. 8. On February 21, 2017, commenting on the then-upcoming revision to the Executive Order, the President's Senior Adviser, Stephen Miller, stated, "Fundamentally, [despite "technical" revisions meant to address the Ninth Circuit's concerns in *Washington*,] you're still going to have the same basic policy outcome [as the first]." SAC ¶ 74.

These plainly-worded statements,[14] made in the months leading up to and contemporaneous with the

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[14] There are many more. *See, e.g.*, Br. of The Roderick and Solange MacArthur Justice Center as Amicus Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 204, at 19-20 ("It's not unconstitutional keeping people out, frankly, and until we get a hold of what's going on. And then if you look at Franklin Roosevelt, a respected president, highly respected. Take a look at Presidential proclamations back a long time ago, 2525, 2526, and 2527 what he was doing with Germans, Italians, and Japanese because he had to do it. Because look we are at war with radical Islam.") (quoting Michael Barbaro and Alan Rappeport, *In Testy Exchange, Donald Trump Interrupts and 'Morning Joe' Cuts to Commercial*, New York Times (Dec. 8, 2015), *available at* https://www.nytimes.com/politics/first-draft/2015/12/08/in-testy-exchange-donaldtrump-interrupts-and-morning-joe-cuts-to-commercial/)); Br. of Muslim Advocates et al. as Amici Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 198, at 10-11 ("On June 13, 2016, after the attack on a nightclub in Orlando, Florida, Mr. Trump said in a speech: 'I called for a ban after San Bernardino, and was met with great scorn and anger, but now many are saying I was right to do so.' Mr. Trump then specified that the Muslim ban would be 'temporary,' 'and apply to

signing of the Executive Order, and, in many cases, made by the Executive himself, betray the Executive Order's stated secular purpose. Any reasonable, objective observer would conclude, as does the Court for purposes of the instant Motion for TRO, that the stated secular purpose of the Executive Order is, at the very least, "secondary to a religious objective" of temporarily suspending the entry of Muslims. *See McCreary*, 545 U.S. at 864.[15]

To emphasize these points, Plaintiffs assert that the stated national security reasons for the Executive Order are pretextual. Two examples of such pretext include the security rationales set forth in Section 1(h):

> "[I]n January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses." [Exec. Order] § 1(h). "And in October 2014, a native of Somalia who had been brought to the United States as a

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certain 'areas of the world when [sic] there is a proven history of terrorism against the United States, Europe or our allies, until we understand how to end these threats.'") (quoting Transcript: Donald Trump's national security speech, *available at* http://www.politico.com/story/2016/06/transcript-donald-trump-national-security- speech-22427).

[15] This Court is not the first to examine these issues. In *Aziz v. Trump*, United States District Court Judge Leonie Brinkema determined that plaintiffs were likely to succeed on the merits of their Establishment Clause claim as it related to Executive Order No. 13,769. Accordingly, Judge Brinkema granted the Commonwealth of Virginia's motion for preliminary injunction. *Aziz v. Trump*, ___ F. Supp. 3d ___, 2017 WL 580855, at *7-*10 (E.D. Va. Feb. 13, 2017).

> child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction[.]" *Id.* Iraq is no longer included in the ambit of the travel ban, *id.*, and the Order states that a waiver could be granted for a foreign national that is a "young child." *Id.* § 3(c)(v).

TRO Mem. 13. Other indicia of pretext asserted by Plaintiffs include the delayed timing of the Executive Order, which detracts from the national security urgency claimed by the Administration, and the Executive Order's focus on nationality, which could have the paradoxical effect of "bar[ring] entry by a Syrian national who has lived in Switzerland for decades, but not a Swiss national who has immigrated to Syria during its civil war," revealing a "gross mismatch between the [Executive] Order's ostensible purpose and its implementation and effects." Pls.' Reply 20 (citation omitted).

While these additional assertions certainly call the motivations behind the Executive Order into greater question,[16] they are not necessary to the Court's Establishment Clause determination. *See Aziz*, 2017 WL 580855, at *8 (the Establishment Clause concerns addressed by the district court's order "do not involve an assessment of the merits of the president's national security judgment. Instead, the question is whether [Executive Order No. 13,769] was animated by national

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[16] *See also* Br. of T.A., a U.S. Resident of Yemeni Descent, as Amicus Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 200, at 15-25 (detailing evidence contrary to the Executive Order's national security justifications).

security concerns at all, as opposed to the impermissible notion of, in the context of entry, disfavoring one religious group, and in the context of refugees, favoring another religious group").

Nor does the Court's preliminary determination foreclose future Executive action. As the Supreme Court noted in *McCreary*, in preliminarily enjoining the third iteration of a Ten Commandments display, "we do not decide that the [government's] past actions forever taint any effort on their part to deal with the subject matter." *McCreary*, 545 U.S. at 873-74; *see also Felix v. City of Bloomfield*, 841 F.3d 848, 863 (10th Cir. 2016) ("In other words, it is possible that a government may begin with an impermissible purpose, or create an unconstitutional effect, but later take affirmative actions to neutralize the endorsement message so that "adherence to a religion [is not] relevant in any way to a person's standing in the political community." (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring))). Here, it is not the case that the Administration's past conduct must forever taint any effort by it to address the security concerns of the nation. Based upon the current record available, however, the Court cannot find the actions taken during the interval between revoked Executive Order No. 13,769 and the new Executive Order to be "genuine changes in constitutionally significant conditions." *McCreary*, 545 U.S. at 874.[17] The

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[17] The Tenth Circuit asked: "What would be enough to meet this standard?"

Court recognizes that "purpose needs to be taken seriously under the Establishment Clause and needs to be understood in light of context; an implausible claim that governmental purpose has changed should not carry the day in a court of law any more than in a head with common sense." *Id.* Yet, context may change during the course of litigation, and the Court is prepared to respond accordingly.

Last, the Court emphasizes that its preliminary assessment rests on the peculiar circumstances and specific historical record present here. *Cf. Aziz*, 2017 WL 580855, at *9 ("The Court's conclusion rests on the highly particular 'sequence of events' leading to this specific [Executive Order No. 13,769] and the dearth of evidence indicating a national security purpose. The evidence in this record focuses on the president's statements about a 'Muslim ban' and the link Giuliani established between those statements and the [Executive Order].") (citing *McCreary*, 545 U.S. at 862).

The case law does not yield a ready answer. But from the above principles we conclude that a government cure should be (1) purposeful, (2) public, and (3) at least as persuasive as the initial endorsement of religion. It should be purposeful enough for an objective observer to know, unequivocally, that the government does not endorse religion. It should be public enough so that people need not burrow into a difficult-to-access legislative record for evidence to assure themselves that the government is not endorsing a religious view. And it should be persuasive enough to countermand the preexisting message of religious endorsement.

Felix, 841 F.3d 863-64.

V. Analysis of TRO Factors: Irreparable Harm

Dr. Elshikh has made a preliminary showing of direct, concrete injuries to the exercise of his Establishment Clause rights. *See, e.g.*, SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3. These alleged injuries have already occurred and likely will continue to occur upon implementation of the Executive Order.

Indeed, irreparable harm may be *presumed* with the finding of a violation of the First Amendment. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Washington*, 847 F.3d at 1169 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'")) (additional citations omitted). Because Dr. Elshikh is likely to succeed on the merits of his Establishment Clause claim, the Court finds that the second factor of the *Winter* test is satisfied—that Dr. Elshikh is likely to suffer irreparable injury in the absence of a TRO.

VI. Analysis of TRO Factors: The Balance of Equities and Public Interest Weigh in Favor of Granting Emergency Relief

The final step in determining whether to grant the Plaintiffs' Motion for TRO is to assess the balance of equities and examine the general public interests that will be affected. Here, the substantial controversy surrounding this Executive Order, like its pre-

decessor, illustrates that important public interests are implicated by each party's positions. *See Washington*, 847 F.3d at 1169. For example, the Government insists that the Executive Order is intended "to protect the Nation from terrorist activities by foreign nationals admitted to the United States[.]" Exec. Order, preamble. National security is unquestionably important to the public at large. Plaintiffs and the public, on the other hand, have a vested interest in the "free flow of travel, in avoiding separation of families, and in freedom from discrimination." *Washington*, 847 F.3d at 1169-70.

As discussed above, Plaintiffs have shown a strong likelihood of succeeding on their claim that the Executive Order violates First Amendment rights under the Constitution. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (emphasis added) (citing *Elrod*, 427 U.S. at 373); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[E]nforcement of an unconstitutional law is always contrary to the public interest." (citing *Lamprecht v. FCC*, 958 F.2d 382, 390 (D.C. Cir. 1992); *G & V Lounge v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

When considered alongside the constitutional injuries and harms discussed above, and the questionable evidence supporting the Government's national security motivations, the balance of equities and public interests justify granting the Plaintiffs' TRO. *See Aziz*, 2017 WL 580855, at * 10. Nationwide relief is appropriate in light of the likelihood of success on the Establishment Clause claim.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion for TRO is hereby GRANTED.

TEMPORARY RESTRAINING ORDER

It is hereby ADJUDGED, ORDERED, and DECREED that:

Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

No security bond is required under Federal Rule of Civil Procedure 65(c).

The Court declines to stay this ruling or hold it in abeyance should an emergency appeal of this order be filed.

Pursuant to Federal Rule of Civil Procedure 65(b)(2), the Court intends to set an expedited hearing to determine whether this Temporary Restraining Order should be extended. The parties shall submit a stipulated briefing and hearing schedule for the Court's approval forthwith.

IT IS SO ORDERED.

Dated: Mar. 15, 2017 at Honolulu, Hawai'i.

[SEAL OMITTED]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. NO. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

[Filed: Mar. 29, 2017]

ORDER GRANTING MOTION TO CONVERT TEMPORARY RESTRAINING ORDER TO A PRELIMINARY INJUNCTION

INTRODUCTION

On March 15, 2017, the Court temporarily enjoined Sections 2 and 6 of Executive Order No. 13,780, entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 6, 2017). *See* Order Granting Mot. for TRO, ECF No. 219 [hereinafter TRO]. Plaintiffs State of Hawai'i and Ismail Elshikh, Ph.D., now move to convert the TRO to a preliminary injunction. *See* Pls.' Mot. to Convert TRO to Prelim. Inj., ECF No. 238 [hereinafter Motion].

Upon consideration of the parties' submissions, and following a hearing on March 29, 2017, the Court concludes that, on the record before it, Plaintiffs have met their burden of establishing a strong likelihood of suc-

cess on the merits of their Establishment Clause claim, that irreparable injury is likely if the requested relief is not issued, and that the balance of the equities and public interest counsel in favor of granting the requested relief. Accordingly, Plaintiffs' Motion (ECF No. 238) is GRANTED.

BACKGROUND

The Court briefly recounts the factual and procedural background relevant to Plaintiffs' Motion. A fuller recitation of the facts is set forth in the Court's TRO. *See* TRO 3-14, ECF No. 219.

I. The President's Executive Orders

A. Executive Order No. 13,769

On January 27, 2017, the President of the United States issued Executive Order No. 13,769 entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 8977 (Jan. 27, 2017).[1] On March 6, 2017, the President issued another

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[1] On February 3, 2017, the State filed its complaint and an initial motion for TRO, which sought to enjoin Sections 3(c), 5(a)-(c), and 5(e) of Executive Order No. 13,769. Pls.' Mot. for TRO, Feb. 3, 2017, ECF No. 2. The Court stayed the case (*see* ECF Nos. 27 & 32) after the United States District Court for the Western District of Washington entered a nationwide preliminary injunction enjoining the Government from enforcing the same provisions of Executive Order No. 13,769 targeted by the State. *See Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). On February 4, 2017, the Government filed an emergency motion in the United States Court of Appeals for the Ninth Circuit seeking a stay of the *Washington* TRO, pending appeal. That emergency motion was denied on February 9, 2017. *See Washington v. Trump*, 847 F.3d 1151 (9th Cir.) (per curium), *denying reconsider-*

Executive Order, No. 13,780, identically entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "Executive Order"), 82 Fed. Reg. 13209. Like its predecessor, the Executive Order restricts the entry of foreign nationals from specified countries and suspends the United States refugee program for specified periods of time.

B. Executive Order No. 13,780

Section 1 of the Executive Order declares that its purpose is to "protect [United States] citizens from terrorist attacks, including those committed by foreign nationals." By its terms, the Executive Order also represents a response to the Ninth Circuit's per curiam decision in *Washington v. Trump*, 847 F.3d 1151. According to the Government, it "clarifies and narrows the scope of Executive action regarding immigration, extinguishes the need for emergent consideration, and eliminates the potential constitutional concerns identified by the Ninth Circuit." Notice of Filing of Executive Order 4-5, ECF No. 56.

Section 2 suspends from "entry into the United States" for a period of 90 days, certain nationals of six countries referred to in Section 217(a)(12) of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*: Iran, Libya, Somalia, Sudan, Syria, and Yemen. 8 U.S.C. § 1187(a)(12); Exec. Order § 2(c). The suspension of entry applies to nationals of these six coun-

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ation en banc, — F.3d —, 2017 WL 992527 (9th Cir. 2017). On March 8, 2017, the Ninth Circuit granted the Government's unopposed motion to voluntarily dismiss the appeal. *See* Order, Case No. 17-35105 (9th Cir. Mar. 8, 2017), ECF No. 187.

tries who (1) are outside the United States on the new Executive Order's effective date of March 16, 2017; (2) do not have a valid visa on that date; and (3) did not have a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017 (the date of Executive Order No. 13,769). Exec. Order § 3(a). The 90-day suspension does not apply to: (1) lawful permanent residents; (2) any foreign national admitted to or paroled into the United States on or after the Executive Order's effective date (March 16, 2017); (3) any individual who has a document other than a visa, valid on the effective date of the Executive Order or issued anytime thereafter, that permits travel to the United States, such as an advance parole document; (4) any dual national traveling on a passport not issued by one of the six listed countries; (5) any foreign national traveling on a diplomatic-type or other specified visa; and (6) any foreign national who has been granted asylum, any refugee already admitted to the United States, or any individual granted withholding of removal, advance parole, or protection under the Convention Against Torture. *See* Exec. Order § 3(b). Under Section 3(c)'s waiver provision, foreign nationals of the six countries who are subject to the suspension of entry may nonetheless seek entry on a case-by-case basis.

Section 6 of the Executive Order suspends the U.S. Refugee Admissions Program for 120 days. The suspension applies both to travel into the United States and to decisions on applications for refugee status. *See* Exec. Order § 6(a). It excludes refugee applicants who were formally scheduled for transit by the Department of State before the March 16, 2017 effective date.

Like the 90-day suspension, the 120-day suspension includes a waiver provision that allows the Secretaries of State and Homeland Security to admit refugee applicants on a case-by-case basis. *See* Exec. Order § 6(c). Unlike Executive Order No. 13,769, the new Executive Order does not expressly refer to an individual's status as a "religious minority" or refer to any particular religion, and it does not include a Syria-specific ban on refugees.

II. Plaintiffs' Claims

Plaintiffs filed a Second Amended Complaint for Declaratory and Injunctive Relief ("SAC") on March 8, 2017 (ECF No. 64) simultaneous with their Motion for TRO (ECF No. 65). The State asserts that the Executive Order inflicts constitutional and statutory injuries upon its residents, employers, and educational institutions, while Dr. Elshikh alleges injuries on behalf of himself, his family, and members of his Mosque. SAC ¶ 1.

According to Plaintiffs, the Executive Order results in "their having to live in a country and in a State where there is the perception that the Government has established a disfavored religion." SAC ¶ 5. Plaintiffs assert that by singling out nationals from the six predominantly Muslim countries, the Executive Order causes harm by stigmatizing not only immigrants and refugees, but also Muslim citizens of the United States. Plaintiffs point to public statements by the President and his advisors regarding the implementation of a "Muslim ban," which Plaintiffs contend is the tacit and illegitimate motivation underlying the Executive Order. *See* SAC ¶¶ 35-60. Plaintiffs argue that, in light of these and similar statements "where the President him-

self has repeatedly and publicly espoused an improper motive for his actions, the President's action must be invalidated." Pls.' Mem. in Supp. of Mot. for TRO 2, ECF No. 65-1. Plaintiffs additionally present evidence that they contend undermines the purported national security rationale for the Executive Order and demonstrates the Administration's pretextual justification for the Executive Order. *E.g.*, SAC ¶ 61 (citing Draft DHS Report, SAC, Ex. 10, ECF No. 64-10).

III. March 15, 2017 TRO

The Court's nationwide TRO (ECF No. 219) temporarily enjoined Sections 2 and 6 of the Executive Order, based on the Court's preliminary finding that Plaintiffs demonstrated a sufficient likelihood of succeeding on their claim that the Executive Order violates the Establishment Clause. *See* TRO 41-42. The Court concluded, based upon the showing of constitutional injury and irreparable harm, the balance of equities, and public interest, that Plaintiffs met their burden in seeking a TRO, and directed the parties to submit a stipulated briefing and preliminary injunction hearing schedule. *See* TRO 42-43.

On March 21, 2017, Plaintiffs filed the instant Motion (ECF No. 238) seeking to convert the TRO to a preliminary injunction prohibiting Defendants from enforcing and implementing Sections 2 and 6 of the Executive Order until the matter is fully decided on the merits. They argue that both of these sections are unlawful in all of their applications and that both provisions are motivated by anti-Muslim animus. Defendants oppose the Motion. *See* Govt. Mem. in Opp'n to Mot. to Convert TRO to Prelim. Inj., ECF No. 251. After full

briefing and notice to the parties, the Court held a hearing on the Motion on March 29, 2017.

DISCUSSION

The Court's TRO details why Plaintiffs are entitled to preliminary injunctive relief. *See* TRO 15-43. The Court reaffirms and incorporates those findings and conclusions here, and addresses the parties' additional arguments on Plaintiffs' Motion to Convert.

I. Plaintiffs Have Demonstrated Standing At This Preliminary Phase

The Court previously found that Plaintiffs satisfied Article III standing requirements at this preliminary stage of the litigation. *See* TRO 15-21 (State), 22-25 (Dr. Elshikh). The Court renews that conclusion here.

A. Article III Standing

Article III, Section 2 of the Constitution permits federal courts to consider only "cases" and "controversies." *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)).

"At this very preliminary stage of the litigation, the [Plaintiffs] may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their TRO motion to meet their burden." *Washington*, 847 F.3d at 1159 (citing *Lujan*, 504 U.S. at 561). "With these allegations and evidence, the [Plaintiffs] must make a 'clear showing of each element of standing.'" *Id.* (quoting *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 907 (2014)). On the record presented at this preliminary stage of the proceedings, Plaintiffs meet the threshold Article III standing requirements.

B. The State Has Standing

For the reasons stated in the TRO, the State has standing based upon injuries to its proprietary interests. *See* TRO 16-21.[2]

The State sufficiently identified monetary and intangible injuries to the University of Hawaii. *See, e.g.*, Suppl. Decl. of Risa E. Dickson, Mot. for TRO, Ex. D-1, ECF No. 66-6; Original Dickson Decl., Mot. for TRO, Ex. D-2, ECF No. 66-7. The Court previously found these types of injuries to be nearly indistinguishable from those found sufficient to confer standing accord-

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[2] The Court once again does not reach the State's alternative standing theory based on protecting the interests of its citizens as *parens patriae*. *See Washington*, 847 F.3d at 1168 n.5 ("The States have asserted other proprietary interests and also presented an alternative standing theory based on their ability to advance the interests of their citizens as *parens patriae*. Because we conclude that the States' proprietary interests as operators of their public universities are sufficient to support standing, we need not reach those arguments.").

ing to the Ninth Circuit's *Washington* decision. *See* 847 F.3d at 1161 ("The necessary connection can be drawn in at most two logical steps: (1) the Executive Order prevents nationals of seven countries from entering Washington and Minnesota; (2) as a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave. And we have no difficulty concluding that the States' injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution and an injunction barring its enforcement."). The State also presented evidence of injury to its tourism industry. *See, e.g.*, SAC ¶ 100; Suppl. Decl. of Luis P. Salaveria, Mot. for TRO, Ex. C-1, ECF No. 66-4; Suppl. Decl. of George Szigeti, ¶¶ 5-8, Mot. for TRO, Ex. B-1, ECF No. 66-2.

For purposes of the instant Motion, the Court concludes that the State has preliminarily demonstrated that: (1) its universities will suffer monetary damages and intangible harms; (2) the State's economy is likely to suffer a loss of revenue due to a decline in tourism; (3) such harms can be sufficiently linked to the Executive Order; and (4) the State would not suffer the harms to its proprietary interests in the absence of implementation of the Executive Order. *See* TRO 21. These preliminary findings apply to each of the challenged Sections of the Executive Order. Accordingly, at this early stage of the litigation, the State has satisfied the requirements of Article III standing.

C. **Dr. Elshikh Has Standing**

Dr. Elshikh likewise has met his preliminary burden to establish standing to assert an Establishment Clause violation. *See* TRO 22-25. "The standing question, in plain English, is whether adherents to a religion have standing to challenge an official condemnation by their government of their religious views[.] Their 'personal stake' assures the 'concrete adverseness' required." *See Catholic League for Religious & Civil Rights v. City & Cty. of San Francisco*, 624 F.3d 1043, 1048-49 (9th Cir. 2010) (en banc). Dr. Elshikh attests that the effects of the Executive Order are "devastating to me, my wife and children." Elshikh Decl. ¶ 6, Mot. for TRO, Ex. A, ECF No. 66-1; *see also id.* ¶¶ 1, 3 ("I am deeply saddened . . . . by the message that both [Executive Orders] convey—that a broad travel-ban is 'needed' to prevent people from certain Muslim countries from entering the United States."); SAC ¶ 90 ("Muslims in the Hawai'i Islamic community feel that the new Executive Order targets Muslim citizens because of their religious views and national origin. Dr. Elshikh believes that, as a result of the new Executive Order, he and members of the Mosque will not be able to associate as freely with those of other faiths."). The alleged injuries are sufficiently personal, concrete, particularized, and actual to confer standing in the Establishment Clause context. *E.g.*, SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3. These injuries have already occurred and will continue to occur if the Executive Order is implemented and enforced; the injuries are neither contingent nor speculative.

The final two aspects of Article III standing—causation and redressability—are also satisfied with respect to each of the Executive Order's challenged Sections. Dr. Elshikh's injuries are traceable to the new Executive Order and, if Plaintiffs prevail, a decision enjoining portions of the Executive Order would redress that injury. *See Catholic League*, 624 F.3d at 1053. At this preliminary stage of the litigation, Dr. Elshikh has accordingly carried his burden to establish standing under Article III.

The Court turns to the factors for granting preliminary injunctive relief.

II. Legal Standard: Preliminary Injunctive Relief

The underlying purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974); *see also Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006).

The Court applies the same standard for issuing a preliminary injunction as it did when considering Plaintiffs' Motion for TRO. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citation omitted).

The Court, in its discretion, may convert a temporary res.raining order into a preliminary injunction. *See, e.g., ABX Air, Inc. v. Int'l Bhd. of Teamsters*, No. 1:16-CV-1096, 2016 WL 7117388, at *5 (S.D. Ohio Dec. 7, 2016) (granting motion to convert TRO into a preliminary injunction because "Defendants fail to allege any material fact suggesting that, if a hearing were held, this Court would reach a different outcome"; "[n]othing has occurred to alter the analysis in the Court's original TRO, and since this Court has already complied with the requirements for the issuance of a preliminary injunction, it can simply convert the nature of its existing Order."); *Productive People, LLC v. Ives Design*, No. CV-09-1080-PHX-GMS, 2009 WL 1749751, at *3 (D. Ariz. June 18, 2009) ("Because Defendants have given the Court no reason to alter the conclusions provided in its previous Order [granting a TRO], and because '[t]he standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction,' the Court will enter a preliminary injunction." (quoting *Brown Jordan Int'l, Inc. v. Mind's Eye Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2002))). Here, the parties were afforded notice, a full-briefing on the merits, and a hearing both prior to entry of the original TRO and prior to consideration of the instant Motion.

For the reasons that follow and as set forth more fully in the Court's TRO, Plaintiffs have met their burden here.

III. Analysis of Factors: Likelihood of Success on the Merits

The Court's prior finding that Plaintiffs sufficiently established a likelihood of success on the merits of their Count I claim that the Executive Order violates the Establishment Clause remains undisturbed. *See* TRO 30-40.[3]

A. Establishment Clause

Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971), provides the benchmark for evaluating whether governmental action is consistent with or at odds with the Establishment Clause. According to *Lemon*, government action (1) must have a primary secular purpose, (2) may not have the principal effect of advancing or inhibiting religion, and (3) may not foster excessive entanglement with religion. *Id.* "Failure to satisfy any one of the three prongs of the *Lemon* test is sufficient to invalidate the challenged law or practice." *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1076-77 (9th Cir. 2010).

The Court determined in its TRO that the preliminary evidence demonstrates the Executive Order's failure to satisfy *Lemon*'s first test. *See* TRO 33-36. The Court will not repeat that discussion here. As no *new* evidence contradicting the purpose identified by the Court has been submitted by the parties since the issuance of the March 15, 2017 TRO, there is no reason to disturb the Court's prior determination.

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[3] The Court again expresses no view on Plaintiffs' additional statutory or constitutional claims.

Instead, the Federal Defendants take a different tack. They once more urge the Court not to look beyond the four corners of the Executive Order. According to the Government, the Court must afford the President deference in the national security context and should not "'look behind the exercise of [the President's] discretion' taken 'on the basis of a facially legitimate and bona fide reason.'" Govt. Mem. in Opp'n to Mot. for TRO 42-43 (quoting *Kliendienst v. Mandel*, 408 U.S. 753, 770 (1972)), ECF No. 145. No binding authority, however, has decreed that Establishment Clause jurisprudence ends at the Executive's door. In fact, *every court* that has considered whether to apply the Establishment Clause to either the Executive Order or its predecessor (regardless of the ultimate outcome) has done so.[4] Significantly, this Court is constrained by

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[4] *See Sarsour v. Trump*, No. 1:17-cv-00120 AJT-IDD, 2017 WL 1113305, at *11 (E.D. Va. Mar. 27, 2017) ("[T]he Court rejects the Defendants' position that since President Trump has offered a legitimate, rational, and non-discriminatory purpose stated in EO-2, this Court must confine its analysis of the constitutional validity of EO-2 to the four corners of the Order.") (citations omitted); *Int'l Refugee Assistance Project v. Trump*, No. TDC-17-0361, 2017 WL 1018235, at *16 (D. Md. Mar. 16, 2017) ("Defendants argue that because the Establishment Clause claim implicates Congress's plenary power over immigration as delegated to the President, the Court need only consider whether the Government has offered a 'facially legitimate and bona fide reason' for its action. *Mandel*, 408 U.S. at 777 . . . . [A]lthough '[t]he Executive has broad discretion over the admission and exclusion of aliens,' that discretion 'may not transgress constitutional limitations,' and it is 'the duty of the courts' to 'say where those statutory and constitutional boundaries lie.' *Abourezk[v. Reagan]*, 785 F.2d [1043,] 1061 [(D.C. Cir. 1986)]."); *Aziz v. Trump*, No. 1:17-CV-116 LMB-TCB, 2017 WL

the binding precedent and guidance offered in *Washington*. There, citing *Lemon*, the Ninth Circuit clearly indicated that the Executive Order is subject to the very type of secular purpose review conducted by this Court in considering the TRO. *Washington*, 847 F.3d at 1167-68; *id.* at 1162 (stating that *Mandel* does not apply to the "promulgation of sweeping immigration policy" at the "highest levels of the political branches").

The Federal Defendants' arguments, advanced from the very inception of this action, make sense from this perspective—where the "historical context and 'the specific sequence of events leading up to'" the adoption of the challenged Executive Order are as full of religious animus, invective, and obvious pretext as is the record here, it is no wonder that the Government urges the Court to altogether ignore that history and context. *See McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 862 (2005). The Court, however, declines to do so. *Washington*, 847 F.3d at 1167 ("It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims."). The Court will not crawl into a corner, pull the shutters

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580855, at *8 (E.D. Va. Feb. 13, 2017) ("Moreover, even if Mandel[, 408 U.S. at 770,] did apply, it requires that the proffered executive reason be 'bona fide.' As the Second and Ninth Circuits have persuasively held, if the proffered 'facially legitimate' reason has been given in 'bad faith,' it is not 'bona fide.' *Am. Academy of Religion v. Napolitano*, 573 F.3d 115, 126 (2d Cir. 2009); *Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008). That leaves the Court in the same position as in an ordinary secular purpose case: determining whether the proffered reason for the EO is the real reason.")).

closed, and pretend it has not seen what it has.[5] The Supreme Court and this Circuit both dictate otherwise, and that is the law this Court is bound to follow.

B. Future Executive Action

The Court's preliminary determination does not foreclose future Executive action. The Court recognizes that it is not the case that the Administration's past conduct must forever taint any effort by it to address the security concerns of the nation. *See* TRO 38-39. Based upon the preliminary record available, however, one cannot conclude that the actions taken during the interval between revoked Executive Order No. 13,769 and the new Executive Order represent "*genuine* changes in constitutionally significant conditions." *McCreary*, 545 U.S. at 874 (emphasis added).

The Government emphasizes that "the Executive Branch revised the new Executive Order to avoid any Establishment Clause concerns," and, in particular, removed the preference for religious minorities provided in Executive Order No. 13,769. Mem. in Opp'n 21, ECF No. 251. These efforts, however, appear to be precisely what Plaintiffs characterize them to be: efforts to "sanitize [Executive Order No. 13,769's] ref-

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[5] *See Int'l Refugee Assistance Project*, 2017 WL 1018235, at *14 ("Defendants have cited no authority concluding that a court assessing purpose under the Establishment Clause may consider only statements made by government employees at the time that they were government employees. Simply because a decisionmaker made the statements during a campaign does not wipe them from the 'reasonable memory' of a 'reasonable observer.'" (quoting *McCreary*, 545 U.S. at 866)).

ugee provision in order to 'be responsive to a lot of very technical issues that were brought up by the court.'" Mem. in Supp. of Mot. to Convert TRO to Prelim. Inj. 20, ECF No. 238-1 [hereinafter PI Mem.] (quoting SAC ¶ 74(a)). Plaintiffs also direct the Court to the President's March 15, 2017 description of the Executive Order as "a watered-down version of the first one." PI Mem. 20 (citing Katyal Decl. 7, Ex. A, ECF No. 239-1). "[A]n implausible claim that governmental purpose has changed should not carry the day in a court of law any more than in a head with common sense." *McCreary*, 545 U.S. at 874.

IV. Analysis of Factors: Irreparable Harm

Irreparable harm may be *presumed* with the finding of a violation of the First Amendment. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Because Dr. Elshikh is likely to succeed on the merits of his Establishment Clause claim, the Court finds that the second factor of the *Winter* test is satisfied—that Dr. Elshikh is likely to suffer irreparable, ongoing, and significant injury in the absence of a preliminary injunction. *See* TRO 40 (citing SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3).

V. Analysis of Factors: Balance of Equities And Public Interest

The final step in determining whether to grant Plaintiffs' Motion is to assess the balance of equities and examine the general public interests that will be

affected. The Court acknowledges Defendants' position that the Executive Order is intended "to protect the Nation from terrorist activities by foreign nationals admitted to the United States[.]" Exec. Order, preamble. National security is unquestionably of vital importance to the public interest. The same is true with respect to affording appropriate deference to the President's constitutional and statutory responsibilities to set immigration policy and provide for the national defense. Upon careful consideration of the totality of the circumstances, however, the Court reaffirms its prior finding that the balance of equities and public interest weigh in favor of maintaining the status quo. As discussed above and in the TRO, Plaintiffs have shown a strong likelihood of succeeding on their claim that the Executive Order violates First Amendment rights under the Constitution. *See* TRO 41-42; *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is *always* in the public interest to prevent the violation of a party's constitutional rights." (emphasis added) (citing *Elrod*, 427 U.S. at 373)).

VI. Scope of Preliminary Injunction: Sections 2 And 6

Having considered the constitutional injuries and harms discussed above, the balance of equities, and public interest, the Court hereby grants Plaintiffs' request to convert the existing TRO into a preliminary injunction. The requested nationwide relief is appropriate in light of the likelihood of success on Plaintiffs' Establishment Clause claim. *See, e.g., Texas v. U.S.*, 809 F.3d 134, 188 (5th Cir. 2015) ("[Because] the Constitution vests [district courts] with 'the judicial Power of the United States' . . . , [i]t is not beyond the

power of the court, in appropriate circumstances, to issue a nationwide injunction." (citing U.S. Const. art. III, § 1)), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016); *see also Washington*, 847 F.3d at 1167 ("Moreover, even if limiting the geographic scope of the injunction would be desirable, the Government has not proposed a workable alternative form of the TRO that accounts for the nation's multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States' borders.").

The Government insists that the Court, at minimum, limit any preliminary injunction to Section 2(c) of the Executive Order. It makes little sense to do so. That is because the entirety of the Executive Order runs afoul of the Establishment Clause where "openly available data support[] a commonsense conclusion that a religious objective permeated the government's action," and not merely the promulgation of Section 2(c). *McCreary*, 545 U.S. at 863; *see* SAC ¶¶ 36-38, 58, 107; TRO 16, 24-25, 42. Put another way, the historical context and evidence relied on by the Court, highlighted by the comments of the Executive and his surrogates, does not parse between Section 2 and Section 6, nor does it do so between subsections within Section 2. Accordingly, there is no basis to narrow the Court's ruling in the manner requested by the Federal Defendants.[6]

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[6] Plaintiffs further note that the Executive Order "bans refugees at a time when the publicized refugee crisis is focused on Muslim-majority nations." Reply in Supp. of Mot. to Convert TRO to Prelim. Inj. 14. Indeed, according to Pew Research Center analy-

See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 539-40 (1993) ("[It would be] implausible to suggest that [Section 2(c)] but not the [other Sections] had as [its] object the suppression of [or discrimination against a] religion. . . . We need not decide whether the Ordinance 87-72 could survive constitutional scrutiny if it existed separately; it must be invalidated because it functions, with the rest of the enactments in question, to suppress Santeria religious worship.").

The Court is cognizant of the difficult position in which this ruling might place government employees performing what the Federal Defendants refer to as "inward-facing" tasks of the Executive Order. Any confusion, however, is due in part to the Government's failure to provide a workable framework for narrowing the scope of the enjoined conduct by specifically identifying those portions of the Executive Order that are in conflict with what it merely argues are "internal governmental communications and activities, most if

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sis of data from the State Department's Refugee Processing Center, a total of 38,901 Muslim refugees entered the United States in fiscal year 2016, accounting for nearly half of the almost 85,000 refugees who entered the country during that period. *See* Br. of Chicago, Los Angeles, New York, Philadelphia, & Other Major Cities & Counties as Amici Curiae in Supp. of Pls.' Mot. to Convert TRO to Prelim. Inj. 12, ECF No. 271-1 (citing Phillip Connor, *U.S. Admits Record Number of Muslim Refugees in 2016*, Pew Research Center (Oct. 5, 2016), http://www.pewresearch.org/fact-tank/2016/10/05/u-s-admits-record-number-ofmuslim-refugees-in-2016). "That means the U.S. has admitted the highest number of Muslim refugees of any year since date of self-reported religious affiliations first became publicly available in 2002." *Id.*

not all of which could take place in the absence of the Executive Order but the status of which is now, at the very least, unclear in view of the current TRO." Mem. in Opp'n 29. The Court simply cannot discern, on the present record, a method for determining which enjoined provisions of the Executive Order are causing the alleged confusion asserted by the Government. *See, e.g.*, Mem. in Opp'n 28 ("[A]n internal review of procedures obviously can take place independently of the 90-day suspension-of-entry provision (though doing so would place additional burdens on the Executive Branch, which is one of the several reasons for the 90-day suspension (citing Exec. Order No. 13,780, § 2(c)). Without more, "even if the [preliminary injunction] might be overbroad in some respects, it is not our role to try, in effect, to rewrite the Executive Order." *Washington*, 847 F.3d at 1167.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion to Convert Temporary Restraining Order to A Preliminary Injunction is hereby GRANTED.

PRELIMINARY INJUNCTION

It is hereby ADJUDGED, ORDERED, and DECREED that:

Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of

entry, and in the issuance of visas is prohibited, pending further orders from this Court.

No security bond is required under Federal Rule of Civil Procedure 65(c).

The Court declines to stay this ruling or hold it in abeyance should an appeal of this order be filed.

IT IS SO ORDERED.

Dated: Mar. 29, 2017 at Honolulu, Hawai'i.

[SEAL OMITTED]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil Action No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII, ISMAIL ELSHIKH, JOHN DOES 1 & 2, AND MUSLIM ASSOCIATION OF HAWAII, INC., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; ELAINE DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

JOINT STIPULATION TO CONVERT TEMPORARY RESTRAINING ORDER TO PRELIMINARY INJUNCTION

Pursuant to Local Rule 10.4, Plaintiffs State of Hawaii, Ismail Elshikh, John Does 1 & 2, and the Muslim Association of Hawaii (collectively, "Plaintiffs"), and Defendants Donald J. Trump, U.S. Department of Homeland Security, Elaine Duke, U.S. Department of State, Rex Tillerson, and the United States of America (collectively, "Defendants"), by their respective counsel, hereby agree and stipulate that the Court's October 17, 2017 Order Granting Motion for Temporary Restraining Order, Dkt. 387, shall be converted to a preliminary injunction. Defendants reserve their right to appeal the injunction.

DATED: Washington, DC, Oct. 20, 2017.

/s/ NEAL K. KATYAL
NEAL K. KATYAL*
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Attorneys for Defendants

APPROVED AND SO ORDERED:

DATED: Oct. 20, 2017 at Honolulu, Hawai'i.

[SEAL OMITTED] /s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge